Montana Legislative History

Chapter: 385 Session L: 1995
Bill Number: 167 Senate

Checklist of Bill History

- History and Final Status Sheet ☑
- Introduced Bill ☑
- Fiscal Note ☑
- Third Reading Bill ☐
- Final Version of Bill ☐

House	Senate
Committee: State/Federal Relations	Committee: Judiciary
Hearing Date(s): 3/7/95	Hearing Date(s): 1/27/95
Committee Report: 3/10/95	Committee Report: 2/8/95

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: S.K. Marshall

Date: 1/4/2024

Notes:

1/23	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
2/03	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 167 INTRODUCED BY BENEDICT, ET AL.

PROVIDE FOR REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS

1/17	INTRODUCED		
1/17	FIRST READING		
1/17	REFERRED TO JUDICIARY		
1/18	FISCAL NOTE REQUESTED		
1/27	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED AS AMENDED	41	7
2/13	3RD READING PASSED	43	7
	TRANSMITTED TO HOUSE		
2/14	FIRST READING		
2/15	REFERRED TO STATE/FEDERAL RELATIONS		
3/07	HEARING		
3/07	REVISED FISCAL NOTE REQUESTED		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/11	FISCAL NOTE RECEIVED		
3/13	FISCAL NOTE PRINTED		
3/25	2ND READING CONCURRED	71	27
3/27	3RD READING CONCURRED	74	23
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR CHAPTER NUMBER 385 EFFECTIVE DATE: 04/12/95		

SB 168 INTRODUCED BY CHRISTIAENS, ET AL.

RELATE TO NEEDS OF MENTAL HEALTH NEEDS REPORTS

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

1/17	INTRODUCED		
1/17	FIRST READING		
1/17	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/18	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
1/24	FISCAL NOTE PRINTED		
2/06	HEARING		
2/08	TABLED IN COMMITTEE		
2/20	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	20	30
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 169 INTRODUCED BY CHRISTIAENS, ET AL.

PROVIDE AN INDIVIDUAL INCOME TAX CREDIT AGAINST PROPERTY TAXES PAID ON TAXPAYER'S PRINCIPAL RESIDENCE

1/17	INTRODUCED
1/17	FIRST READING

SENATE BILL NO.

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN THE MOST COST-EFFECTIVE MANNER; REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Federal Mandates Act".

NEW SECTION. **Section 2. Legislative declaration.** (1) (a) In enacting [sections 1 through 5], the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these

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INTRODUCED BILL

mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of [sections 1 through 5] will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of [sections 1 through 5] ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of [sections 1 through 5] is to ensure that federal mandates implemented in Montana comply with state policy as established by the legislature.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 5], unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments. The term includes but is not limited to the following:

(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;

(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;

(c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;

(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;

(e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as amended;

(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended;

(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as amended;

(h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;

(i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as amended;

(j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;

(k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;

(l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;

(m) the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., as amended;

(n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751, et seq., as amended;

(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;

(p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as amended;

(q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;

(r) federal highway safety programs;

(s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as amended;

(t) the federal Educate America Act, Public Law 103-227.

(2) "Legislative council" means the statutory committee established in 5-11-101.

(3) "Legislative finance committee" means the statutory committee established in 5-12-201.

NEW SECTION. **Section 4. State programs to implement federal statutes.** (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

NEW SECTION. **Section 5. Legislative finance committee -- reports to legislative council -- savings.** (1) The legislative finance committee shall report to the legislative council regarding the proposed implementation of this section.

(2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for the program may not be enacted unless:

(i) the state program is necessary to protect the public health, safety, and welfare;

(ii) the state program is necessary to implement the federal statute;

(iii) the operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the state, by local government, and by business; or

(iv) the state program benefits the state, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.

(b) Each state agency that makes a budget request for an appropriation for a state program authorized or mandated by federal statute shall include in its budget request citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The legislative finance committee shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the legislature and the legislative council.

(c) The legislature, after receiving a recommendation from the legislative finance committee and the legislative council, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The legislature shall exercise a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Enactment of a state appropriation for a state program constitutes the legislature's determination that the state program is necessary and that federal constitutional authority and state constitutional or statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.

(d) Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the office of budget and program planning and the legislative finance committee shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of the federal statute but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the office of budget and program planning and the legislative finance committee regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The

office of budget and program planning shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in its annual budget request to the legislative finance committee based upon the information.

(3) For purposes of this section, "state program" does not include any portion of a program that is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a trusteeship or custodial capacity and that is not subject to appropriation by the legislature.

NEW SECTION. **Section 6. Requests for information regarding federal mandates.** (1) The staff of the legislative council and the office of legislative fiscal analyst shall jointly prepare one or more requests for information regarding federal mandates on or before August 31, 1995. The requests for information must be directed to persons involved with or affected by federal mandates, including but not limited to the following:

(a) public and private institutions of higher education both within and outside Montana and individuals in the institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;

(b) attorneys in private practice who have dealt with federal mandate litigation or research; and

(c) organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on local and state governments.

(2) The issues addressed in the requests for information issued pursuant to this section must include the following:

(a) identification of federal mandates expressing broad federal policies that would best be implemented on a state-by-state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;

(b) legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state's own policies;

(c) practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;

(d) recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and that

is suited to the needs of each state; and

(e) possible funding sources for federal mandate efforts and opportunities for the state of Montana to match other funding sources or to cooperate with other entities in working toward federal mandate solutions.

(3) The requests for information prepared pursuant to this section must require that the initial responses be received by the staff of the legislative council and the office of legislative fiscal analyst by October 15, 1995. The staff of the legislative council and the office of legislative fiscal analyst may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

NEW SECTION. **Section 7. Report -- recommendations.** (1) The staff of the legislative council and the office of legislative fiscal analyst shall examine the information received through the requests for information prepared pursuant to [section 6] and, based upon the information, shall jointly present a report to the governor, the legislative council, and the legislative finance committee on or before December 1, 1995, that includes the following:

(a) recommendations regarding:

(i) contracts that the committees may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; or

(ii) a request for proposals process to obtain bids for contracts to provide services regarding federal mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the results of any research or analysis performed under the contracts be received by the committees on or before July 1, 1996; and

(b) estimates of the cost of the federal mandate efforts recommended by the staff of the legislative council and the office of legislative fiscal analyst under the provisions of this section and recommendations regarding any possible public and private sources of money to fund the efforts, including any appropriations by the legislature that may be required.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate.

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0167, third reading

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing for the review of federal mandates to state and local governments; requiring agencies to implement federal mandates in the most cost-effective manner; providing for legislative review and oversight; requiring a study and report on federal mandates; and providing an immediate effective date.

ASSUMPTIONS:

1. As implied in Section 8, requests from the legislature to provide assistance regarding the implementation of federal statute and regulations will be made to the Legislative Council and/or the Legislative Fiscal Analyst. Any activity undertaken by the legislative staff is discretionary. Consequently, it may be assumed that the activity would either be (a) absorbed within available resources or (b) addressed specifically in other legislation containing a separate appropriation.
2. Additional work will be required of all state agencies participating in federal programs, specifically to comply with Section 5 by providing (a) information regarding monetary savings and reductions in regulatory burdens that have been or could be achieved; and (b) advice to the Governor regarding changes in state statutes that could create additional savings or greater reductions in regulatory burdens.
3. At this time, some agencies are unable to accurately predict the extent of the additional work and other agencies are suggesting the workload can be organized and managed within the Executive Budget present law base.
4. The Office of Budget and Program Planning will provide written guidance to state agencies for implementation of Section 5 (assumption #2) as part of the 1999 biennium Executive Planning Process using its present law base appropriation.
5. The Governor's report to the legislature in its next regular session will be incorporated in the 1999 biennium Executive Budget and will include an estimate on the cost of obtaining the information required under Section 5 (assumption #2). However, the 1999 biennium Executive Budget will not include an estimate on the cost of federal mandates to the State of Montana [clarification of legislative intent regarding page 8, lines 12 through 13 of the proposed bill].
6. Based on the assumptions stated above, there will be no increased costs to state agencies that are large enough or clearly enough defined to support an amendment to the general appropriations act during the current legislative session for an increased appropriation.

FISCAL IMPACT:
None identified.

Dave Lewis 3-11-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

S R Benedict 3-13-9

STEVE BENEDICT, PRIMARY SPONSOR DATE

APPROVED BY COM
ON JUDICIARY

SENATE BILL NO. 167

INTRODUCED BY BENEDICT, CURTISS, BURNETT, BAER, BECK, ORR, BROWN, MERCER, HARP, GRINDE, SWYSGOOD, FOSTER, PECK, GAGE, MURDOCK, FISHER, BERGMAN, MILLS, SLITER, WAGNER, DENNY, CLARK, EMERSON, MOHL, MESAROS, GREEN, SOFT, FORRESTER, JENKINS, JACOBSON, L. NELSON, STANG, TVEIT, CRISMORE, SIMPKINS, AHNER, MILLER, MARSHALL, HOLDEN, GROSFIELD, DEVLIN, ESTRADA, HARDING, LYNCH, CRIPPEN, JABS, SPRAGUE, HARGROVE, KEATING, PAVLOVICH, HAYNE, MASOLO, BOHLINGER, ROSE, HERRON, HERTEL, TOEWS, L. SMITH, TAYLOR, ARNOTT, MOLNAR, BARNETT, DEBRUYCKER, SOMERVILLE, M. HANSON, OHS, WISEMAN, KNOX, ANDERSON, DEVANEY, STOVALL, FORBES, T. NELSON, LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN THE MOST COST-EFFECTIVE MANNER; PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT; REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~5~~ 8] may be cited as the "Federal Mandates Act".

NEW SECTION. **Section 2. Legislative declaration.** (1) (a) In enacting [sections 1 through ~~5~~ 8], the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of [sections 1 through ~~5~~ 8] will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of [sections 1 through ~~5~~ 8] ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of [sections 1 through ~~5~~ 8] is to ensure that federal mandates EXISTING ON OR ADOPTED AFTER [THE EFFECTIVE DATE OF THIS ACT] THAT ARE implemented in Montana comply with state policy as established by the legislature;

(H) NOTHING IN [SECTIONS 1 THROUGH 8] MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through ~~5~~ 8], unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments. ~~The term includes but is not limited to the following:~~

~~(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;~~

~~(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;~~

~~(c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;~~

~~(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;~~

~~(e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as amended;~~

~~(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended;~~

~~(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as amended;~~

~~(h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;~~

~~(i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as amended;~~

~~(j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;~~

~~(k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;~~

~~(l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;~~

~~(m) the federal Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. 11001, et seq., as amended;~~

~~(n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751, et seq., as amended;~~

~~(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;~~

~~(p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as amended;~~

~~(q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;~~

~~(r) federal highway safety programs;~~

~~(s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as amended;~~

~~(t) the federal Educate America Act, Public Law 103-227.~~

(2) "Legislative council" means the statutory committee established in 5-11-101.

~~(3) "Legislative finance committee" means the statutory committee established in 5-12-201.~~

NEW SECTION. **Section 4. State programs to implement federal statutes.** (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

NEW SECTION. **Section 5.** ~~**Legislative finance committee -- reports to legislative council**~~ **REQUIREMENT FOR BUDGET RECOMMENDATION -- REPORTING ON FEDERAL MANDATES** -- **savings.** ~~(1) The legislative finance committee shall report to the legislative council regarding the proposed implementation of this section.~~

~~(2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for the program may not be enacted unless:~~

~~(i) the state program is necessary to protect the public health, safety, and welfare;~~

~~(ii) the state program is necessary to implement the federal statute;~~

~~(iii) the operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the state, by local government, and by business; or~~

~~(iv) the state program benefits the state, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.~~

~~(b) Each state agency that makes a budget request for an appropriation for a state program authorized or mandated by federal statute shall include in its budget request citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The legislative finance committee shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the legislature and the legislative council.~~

~~(c) The legislature, after receiving a recommendation from the legislative finance committee and the legislative council, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The legislature shall exercise a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Enactment of a state appropriation for a state program constitutes the legislature's determination that the state program is necessary and that federal constitutional authority and state constitutional or~~

~~statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.~~

~~(d)~~ Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the ~~office of budget and program planning and the legislative finance committee~~ GOVERNOR shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of ~~the~~ APPLICABLE federal ~~statute~~ STATUTES but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the ~~office of budget and program planning and the legislative finance committee~~ GOVERNOR regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The ~~office of budget and program planning~~ GOVERNOR shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in ~~its annual budget request to the legislative finance committee~~ THE GOVERNOR'S BUDGET based upon the information.

~~(3) For purposes of this section, "state program" does not include any portion of a program that is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a trusteeship or custodial capacity and that is not subject to appropriation by the legislature.~~

NEW SECTION. **Section 6. ~~Requests for information~~ INFORMATION regarding federal mandates.** ~~(1) The staff of the legislative council and the office of legislative fiscal analyst shall jointly prepare one or more requests for information regarding federal mandates on or before August 31, 1995. The requests for information must be directed to persons involved with or affected by federal mandates, including but not limited to the following:~~

~~(a) public and private institutions of higher education both within and outside Montana and individuals in the institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;~~

~~(b) attorneys in private practice who have dealt with federal mandate litigation or research; and~~

~~(c) organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on local and state governments.~~

~~(2) The issues addressed in the requests for information issued pursuant to this section must include the following:~~

~~(a) identification of federal mandates expressing broad federal policies that would best be implemented on a state-by-state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;~~

~~(b) legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state's own policies;~~

~~(c) practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;~~

~~(d) recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and that is suited to the needs of each state; and~~

~~(e) possible funding sources for federal mandate efforts and opportunities for the state of Montana to match other funding sources or to cooperate with other entities in working toward federal mandate solutions.~~

~~(3)~~(1) The ~~requests for~~ information prepared pursuant to ~~this section~~ [SECTION 5] must ~~require that the initial responses~~ be received by the ~~staff of the legislative council and the office of legislative fiscal analyst by~~ GOVERNOR ~~October 15, 1995~~ PRIOR TO THE GOVERNOR'S PREPARATION OF THE STATE BUDGET FOR THE ENSUING BIENNIUM. The ~~staff of the legislative council and the office of legislative fiscal analyst~~ GOVERNOR may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) IN CONSIDERING THE LEGALITY OR COST-EFFECTIVENESS OF A FEDERAL MANDATE, FEDERAL STATUTE, OR STATE PROGRAM, THE GOVERNOR MAY REQUEST ASSISTANCE FROM THE LEGISLATIVE COUNCIL OR ITS STAFF, BUT ASSISTANCE IS AT THE DISCRETION OF THE LEGISLATIVE COUNCIL.

NEW SECTION. **Section 7. Report -- recommendations.** (1) The ~~staff of the legislative council and the office of legislative fiscal analyst~~ GOVERNOR shall examine the information received ~~through the requests for information prepared~~ pursuant to [section ~~6~~ 5] and, based upon the information, shall ~~jointly~~

present a report to the governor~~, the legislative council, and the legislative finance committee on or before December 1, 1995,~~ AND THE LEGISLATURE MEETING IN ITS NEXT REGULAR SESSION that includes the following:

(a) recommendations regarding~~:~~

~~(i)~~ contracts that the ~~committees~~ STATE may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; ~~or~~ AND

~~(ii) a request for proposals process to obtain bids for contracts to provide services regarding federal mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the results of any research or analysis performed under the contracts be received by the committees on or before July 1, 1996; and~~

(b) estimates of the cost of the federal mandate efforts ~~recommended by the staff of the legislative council and the office of legislative fiscal analyst~~ SUBMITTED TO THE GOVERNOR under the provisions of this section ~~and recommendations regarding any possible public and private sources of money to fund the efforts, including any appropriations by the legislature that may be required~~.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate AND MAY DIRECT THE ATTORNEY GENERAL TO VIGOROUSLY REPRESENT THE STATE OF MONTANA IN ANY ACTION THAT RESULTS FROM OR THAT IS NECESSARY TO EFFECT THE EXECUTIVE ORDER.

NEW SECTION. **SECTION 8. LEGISLATIVE REVIEW AND OVERSIGHT.** (1) IN EXERCISING ITS AUTHORITY AS AN EQUAL BRANCH OF STATE GOVERNMENT, THE LEGISLATURE MAY CONDUCT ANY LEGAL REVIEW OR FISCAL ANALYSIS THAT IT CONSIDERS NECESSARY TO EFFECT THE PURPOSE AND INTENT OF [SECTIONS 1 THROUGH 8]. THE GOVERNOR, THE DIRECTOR OR CHIEF EXECUTIVE OFFICER OF ANY AGENCY WITHIN THE EXECUTIVE BRANCH, OR ANY OFFICER LISTED IN ARTICLE VI, SECTION 1, OF THE MONTANA CONSTITUTION SHALL, UPON REQUEST BY THE LEGISLATURE, IMMEDIATELY PROVIDE ANY INFORMATION PREPARED, COMPILED, DEVELOPED, DETAILED, DESCRIBED, REFERENCED, ANALYZED, REPORTED, OR IN ANY OTHER MANNER CONSIDERED IN CONJUNCTION WITH [SECTIONS 1 THROUGH 8].

(2) IN RECEIVING THE INFORMATION DESCRIBED IN SUBSECTION (1), THE LEGISLATURE IS BOUND BY THE PROVISIONS OF ARTICLE II, SECTIONS 9 AND 10, OF THE MONTANA CONSTITUTION.

(3) FOR THE PURPOSES OF THIS SECTION, THE LEGISLATURE INCLUDES THE SENATE AND THE HOUSE OF REPRESENTATIVES, ACTING JOINTLY OR SEPARATELY, AND INCLUDES THE LEGISLATIVE COUNCIL.

(4) THE LEGISLATURE MAY REQUEST THE ASSISTANCE OF ANY STAFF EMPLOYED BY THE LEGISLATURE.

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

-END-

SENATE BILL NO. 167

INTRODUCED BY BENEDICT, CURTISS, BURNETT, BAER, BECK, ORR, BROWN, MERCER, HARP, GRINDE, SWYSGOOD, FOSTER, PECK, GAGE, MURDOCK, FISHER, BERGMAN, MILLS, SLITER, WAGNER, DENNY, CLARK, EMERSON, MOHL, MESAROS, GREEN, SOFT, FORRESTER, JENKINS, JACOBSON, L. NELSON, STANG, TVEIT, CRISMORE, SIMPKINS, AHNER, MILLER, MARSHALL, HOLDEN, GROSFIELD, DEVLIN, ESTRADA, HARDING, LYNCH, CRIPPEN, JABS, SPRAGUE, HARGROVE, KEATING, PAVLOVICH, HAYNE, MASOLO, BOHLINGER, ROSE, HERRON, HERTEL, TOEWS, L. SMITH, TAYLOR, ARNOTT, MOLNAR, BARNETT, DEBRUYCKER, SOMERVILLE, LARSON, FORBES, M. HANSON, OHS, WISEMAN, KNOX, ANDERSON, DEVANEY, STOVALL, T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN THE MOST COST-EFFECTIVE MANNER; PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT; REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~5~~ 8] may be cited as the "Federal Mandates Act".

NEW SECTION. **Section 2. Legislative declaration.** (1) (a) In enacting [sections 1 through ~~5~~ 8], the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of [sections 1 through ~~5~~ 8] will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of [sections 1 through ~~5~~ 8] ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of [sections 1 through ~~5~~ 8] is to ensure that federal mandates EXISTING ON OR ADOPTED AFTER [THE EFFECTIVE DATE OF THIS ACT] THAT ARE implemented in Montana comply with state policy as established by the legislature;

(H) NOTHING IN [SECTIONS 1 THROUGH 8] MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through ~~5~~ 8], unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments. ~~The term includes but is not limited to the following:~~

~~(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;~~

~~(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;~~

~~(c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;~~

~~(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;~~

~~(e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as amended;~~

~~(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended;~~

~~(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as amended;~~

~~(h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;~~

~~(i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as amended;~~

~~(j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;~~

~~(k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;~~

~~(l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;~~

~~(m) the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., as amended;~~

~~(n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751, et seq., as amended;~~

~~(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;~~

~~(p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as amended;~~

~~(q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;~~

~~(r) federal highway safety programs;~~

~~(s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as amended;~~

~~(t) the federal Educate America Act, Public Law 103-227.~~

(2) "Legislative council" means the statutory committee established in 5-11-101.

~~(3) "Legislative finance committee" means the statutory committee established in 5-12-201.~~

NEW SECTION. **Section 4. State programs to implement federal statutes.** (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

NEW SECTION. **Section 5.** ~~**Legislative finance committee -- reports to legislative council**~~ **REQUIREMENT FOR BUDGET RECOMMENDATION -- REPORTING ON FEDERAL MANDATES** -- **savings.** ~~(1) The legislative finance committee shall report to the legislative council regarding the proposed implementation of this section.~~

~~(2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for the program may not be enacted unless:~~

~~(i) the state program is necessary to protect the public health, safety, and welfare;~~

~~(ii) the state program is necessary to implement the federal statute;~~

~~(iii) the operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the state, by local government, and by business; or~~

~~(iv) the state program benefits the state, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.~~

~~(b) Each state agency that makes a budget request for an appropriation for a state program authorized or mandated by federal statute shall include in its budget request citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The legislative finance committee shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the legislature and the legislative council.~~

~~(c) The legislature, after receiving a recommendation from the legislative finance committee and the legislative council, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The legislature shall exercise a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Enactment of a state appropriation for a state program constitutes the legislature's determination that the state program is necessary and that federal constitutional authority and state constitutional or~~

~~statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.~~

~~(d)~~ Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the ~~office of budget and program planning and the legislative finance committee~~ GOVERNOR shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of ~~the~~ APPLICABLE federal ~~statute~~ STATUTES but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the ~~office of budget and program planning and the legislative finance committee~~ GOVERNOR regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The ~~office of budget and program planning~~ GOVERNOR shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in ~~its annual budget request to the legislative finance committee~~ THE GOVERNOR'S BUDGET based upon the information.

~~(3) For purposes of this section, "state program" does not include any portion of a program that is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a trusteeship or custodial capacity and that is not subject to appropriation by the legislature.~~

NEW SECTION. **Section 6. ~~Requests for information~~ INFORMATION regarding federal mandates.** ~~(1) The staff of the legislative council and the office of legislative fiscal analyst shall jointly prepare one or more requests for information regarding federal mandates on or before August 31, 1995. The requests for information must be directed to persons involved with or affected by federal mandates, including but not limited to the following:~~

~~(a) public and private institutions of higher education both within and outside Montana and individuals in the institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;~~

~~(b) attorneys in private practice who have dealt with federal mandate litigation or research; and~~

~~(c) organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on local and state governments.~~

~~(2) The issues addressed in the requests for information issued pursuant to this section must include the following:~~

~~(a) identification of federal mandates expressing broad federal policies that would best be implemented on a state-by-state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;~~

~~(b) legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state's own policies;~~

~~(c) practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;~~

~~(d) recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and that is suited to the needs of each state; and~~

~~(e) possible funding sources for federal mandate efforts and opportunities for the state of Montana to match other funding sources or to cooperate with other entities in working toward federal mandate solutions.~~

~~(3)~~(1) The ~~requests for~~ information prepared pursuant to ~~this section~~ [SECTION 5] must ~~require that the initial responses~~ be received by the ~~staff of the legislative council and the office of legislative fiscal analyst by~~ GOVERNOR ~~October 15, 1995~~ PRIOR TO THE GOVERNOR'S PREPARATION OF THE STATE BUDGET FOR THE ENSUING BIENNIUM. The ~~staff of the legislative council and the office of legislative fiscal analyst~~ GOVERNOR may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) IN CONSIDERING THE LEGALITY OR COST-EFFECTIVENESS OF A FEDERAL MANDATE, FEDERAL STATUTE, OR STATE PROGRAM, THE GOVERNOR MAY REQUEST ASSISTANCE FROM THE LEGISLATIVE COUNCIL OR ITS STAFF, BUT ASSISTANCE IS AT THE DISCRETION OF THE LEGISLATIVE COUNCIL.

NEW SECTION. **Section 7. Report -- recommendations.** (1) The ~~staff of the legislative council and the office of legislative fiscal analyst~~ GOVERNOR shall examine the information received ~~through the requests for information prepared~~ pursuant to [section ~~6~~ 5] and, based upon the information, shall ~~jointly~~

present a report to ~~the governor, the legislative council, and the legislative finance committee on or before December 1, 1995,~~ AND THE LEGISLATURE MEETING IN ITS NEXT REGULAR SESSION that includes the following:

(a) recommendations regarding:

~~(i)~~ contracts that the ~~committees~~ STATE may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; ~~or~~ AND

~~(ii) a request for proposals process to obtain bids for contracts to provide services regarding federal mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the results of any research or analysis performed under the contracts be received by the committees on or before July 1, 1996; and~~

(b) estimates of the cost of the federal mandate efforts ~~recommended by the staff of the legislative council and the office of legislative fiscal analyst~~ SUBMITTED TO THE GOVERNOR under the provisions of ~~this section~~ [SECTION 5] ~~and recommendations regarding any possible public and private sources of money to fund the efforts, including any appropriations by the legislature that may be required~~.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate AND MAY DIRECT THE ATTORNEY GENERAL TO VIGOROUSLY REPRESENT THE STATE OF MONTANA IN ANY ACTION THAT RESULTS FROM OR THAT IS NECESSARY TO EFFECT THE EXECUTIVE ORDER.

NEW SECTION. **SECTION 8. LEGISLATIVE REVIEW AND OVERSIGHT.** (1) IN EXERCISING ITS AUTHORITY AS AN EQUAL BRANCH OF STATE GOVERNMENT, THE LEGISLATURE MAY CONDUCT ANY LEGAL REVIEW OR FISCAL ANALYSIS THAT IT CONSIDERS NECESSARY TO EFFECT THE PURPOSE AND INTENT OF [SECTIONS 1 THROUGH 8]. THE GOVERNOR, THE DIRECTOR OR CHIEF EXECUTIVE OFFICER OF ANY AGENCY WITHIN THE EXECUTIVE BRANCH, OR ANY OFFICER LISTED IN ARTICLE VI, SECTION 1, OF THE MONTANA CONSTITUTION SHALL, UPON REQUEST BY THE LEGISLATURE, IMMEDIATELY PROVIDE ANY INFORMATION PREPARED, COMPILED, DEVELOPED, DETAILED, DESCRIBED, REFERENCED, ANALYZED, REPORTED, OR IN ANY OTHER MANNER CONSIDERED IN CONJUNCTION WITH [SECTIONS 1 THROUGH 8].

(2) IN RECEIVING THE INFORMATION DESCRIBED IN SUBSECTION (1), THE LEGISLATURE IS BOUND BY THE PROVISIONS OF ARTICLE II, SECTIONS 9 AND 10, OF THE MONTANA CONSTITUTION.

(3) FOR THE PURPOSES OF THIS SECTION, THE LEGISLATURE INCLUDES THE SENATE AND THE HOUSE OF REPRESENTATIVES, ACTING JOINTLY OR SEPARATELY, AND INCLUDES THE LEGISLATIVE COUNCIL.

(4) THE LEGISLATURE MAY REQUEST THE ASSISTANCE OF ANY STAFF EMPLOYED BY THE LEGISLATURE.

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

-END-

SENATE BILL NO. 167

INTRODUCED BY BENEDICT, CURTISS, BURNETT, BAER, BECK, ORR, BROWN, MERCER, HARP, GRINDE, SWYSGOOD, FOSTER, PECK, GAGE, MURDOCK, FISHER, BERGMAN, MILLS, SLITER, WAGNER, DENNY, CLARK, EMERSON, MOHL, MESAROS, GREEN, SOFT, FORRESTER, JENKINS, JACOBSON, L. NELSON, STANG, TVEIT, CRISMORE, SIMPKINS, AHNER, MILLER, MARSHALL, HOLDEN, GROSFIELD, DEVLIN, ESTRADA, HARDING, LYNCH, CRIPPEN, JABS, SPRAGUE, HARGROVE, KEATING, PAVLOVICH, HAYNE, MASOLO, BOHLINGER, ROSE, HERRON, HERTEL, TOEWS, L. SMITH, TAYLOR, ARNOTT, MOLNAR, BARNETT, DEBRUYCKER, SOMERVILLE, LARSON, FORBES, M. HANSON, OHS, WISEMAN, KNOX, ANDERSON, DEVANEY, STOVALL, T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL MANDATES TO STATE AND LOCAL GOVERNMENTS; REQUIRING AGENCIES TO IMPLEMENT FEDERAL MANDATES IN THE MOST COST-EFFECTIVE MANNER; PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT; REQUIRING A STUDY AND REPORT ON FEDERAL MANDATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~5~~ 8] may be cited as the "Federal Mandates Act".

NEW SECTION. **Section 2. Legislative declaration.** (1) (a) In enacting [sections 1 through ~~5~~ 8], the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of [sections 1 through ~~5~~ 8] will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of [sections 1 through ~~5~~ 8] ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of [sections 1 through ~~5~~ 8] is to ensure that federal mandates EXISTING ON OR ADOPTED AFTER [THE EFFECTIVE DATE OF THIS ACT] THAT ARE implemented in Montana comply with state policy as established by the legislature;

(H) NOTHING IN [SECTIONS 1 THROUGH 8] MAY BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through ~~5~~ 8], unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments. ~~The term includes but is not limited to the following:~~

~~(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;~~

~~(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;~~

~~(c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;~~

~~(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;~~

~~(e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as amended;~~

~~(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended;~~

~~(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as amended;~~

~~(h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;~~

~~(i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as amended;~~

~~(j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;~~

~~(k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;~~

~~(l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;~~

~~(m) the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., as amended;~~

~~(n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751, et seq., as amended;~~

~~(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;~~

~~(p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as amended;~~

~~(q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;~~

~~(r) federal highway safety programs;~~

~~(s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as amended;~~

~~(t) the federal Educate America Act, Public Law 103-227.~~

(2) "Legislative council" means the statutory committee established in 5-11-101.

~~(3) "Legislative finance committee" means the statutory committee established in 5-12-201.~~

NEW SECTION. **Section 4. State programs to implement federal statutes.** (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

NEW SECTION. **Section 5.** ~~**Legislative finance committee -- reports to legislative council**~~ **REQUIREMENT FOR BUDGET RECOMMENDATION -- REPORTING ON FEDERAL MANDATES -- savings.**

~~(1) The legislative finance committee shall report to the legislative council regarding the proposed implementation of this section.~~

~~(2) (a) If a state program is authorized or mandated by a federal statute, a state appropriation for the program may not be enacted unless:~~

~~(i) the state program is necessary to protect the public health, safety, and welfare;~~

~~(ii) the state program is necessary to implement the federal statute;~~

~~(iii) the operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the state, by local government, and by business; or~~

~~(iv) the state program benefits the state, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.~~

~~(b) Each state agency that makes a budget request for an appropriation for a state program authorized or mandated by federal statute shall include in its budget request citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The legislative finance committee shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the legislature and the legislative council.~~

~~(c) The legislature, after receiving a recommendation from the legislative finance committee and the legislative council, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The legislature shall exercise a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Enactment of a state appropriation for a state program constitutes the legislature's determination that the state program is necessary and that federal constitutional authority and state constitutional or~~

~~statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.~~

~~(d)~~ Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the ~~office of budget and program planning and the legislative finance committee~~ GOVERNOR shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of ~~the~~ APPLICABLE federal ~~statute~~ STATUTES but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the ~~office of budget and program planning and the legislative finance committee~~ GOVERNOR regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The ~~office of budget and program planning~~ GOVERNOR shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in ~~its annual budget request to the legislative finance committee~~ THE GOVERNOR'S BUDGET based upon the information.

~~(3) For purposes of this section, "state program" does not include any portion of a program that is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a trusteeship or custodial capacity and that is not subject to appropriation by the legislature.~~

NEW SECTION. **Section 6. ~~Requests for information~~ INFORMATION regarding federal mandates.** ~~(1) The staff of the legislative council and the office of legislative fiscal analyst shall jointly prepare one or more requests for information regarding federal mandates on or before August 31, 1995. The requests for information must be directed to persons involved with or affected by federal mandates, including but not limited to the following:~~

~~(a) public and private institutions of higher education both within and outside Montana and individuals in the institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;~~

~~(b) attorneys in private practice who have dealt with federal mandate litigation or research; and~~

~~(c) organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on local and state governments.~~

~~(2) The issues addressed in the requests for information issued pursuant to this section must include the following:~~

~~(a) identification of federal mandates expressing broad federal policies that would best be implemented on a state-by-state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;~~

~~(b) legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state's own policies;~~

~~(c) practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;~~

~~(d) recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and that is suited to the needs of each state; and~~

~~(e) possible funding sources for federal mandate efforts and opportunities for the state of Montana to match other funding sources or to cooperate with other entities in working toward federal mandate solutions.~~

~~(3)~~(1) The ~~requests for~~ information prepared pursuant to ~~this section~~ [SECTION 5] must ~~require that the initial responses~~ be received by the ~~staff of the legislative council and the office of legislative fiscal analyst by~~ GOVERNOR ~~October 15, 1995~~ PRIOR TO THE GOVERNOR'S PREPARATION OF THE STATE BUDGET FOR THE ENSUING BIENNIUM. The ~~staff of the legislative council and the office of legislative fiscal analyst~~ GOVERNOR may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) IN CONSIDERING THE LEGALITY OR COST-EFFECTIVENESS OF A FEDERAL MANDATE, FEDERAL STATUTE, OR STATE PROGRAM, THE GOVERNOR MAY REQUEST ASSISTANCE FROM THE LEGISLATIVE COUNCIL OR ITS STAFF, BUT ASSISTANCE IS AT THE DISCRETION OF THE LEGISLATIVE COUNCIL.

NEW SECTION. **Section 7. Report -- recommendations.** (1) The ~~staff of the legislative council and the office of legislative fiscal analyst~~ GOVERNOR shall examine the information received ~~through the requests for information prepared~~ pursuant to [section ~~6~~ 5] and, based upon the information, shall ~~jointly~~

present a report to ~~the governor, the legislative council, and the legislative finance committee on or before December 1, 1995,~~ AND THE LEGISLATURE MEETING IN ITS NEXT REGULAR SESSION that includes the following:

(a) recommendations regarding:

~~(i)~~ contracts that the ~~committees~~ STATE may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; ~~or~~ AND

~~(ii) a request for proposals process to obtain bids for contracts to provide services regarding federal mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the results of any research or analysis performed under the contracts be received by the committees on or before July 1, 1996; and~~

(b) estimates of the cost of the federal mandate efforts ~~recommended by the staff of the legislative council and the office of legislative fiscal analyst~~ SUBMITTED TO THE GOVERNOR under the provisions of ~~this section~~ [SECTION 5] ~~and recommendations regarding any possible public and private sources of money to fund the efforts, including any appropriations by the legislature that may be required~~.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate AND MAY DIRECT THE ATTORNEY GENERAL TO VIGOROUSLY REPRESENT THE STATE OF MONTANA IN ANY ACTION THAT RESULTS FROM OR THAT IS NECESSARY TO EFFECT THE EXECUTIVE ORDER.

NEW SECTION. **SECTION 8. LEGISLATIVE REVIEW AND OVERSIGHT.** (1) IN EXERCISING ITS AUTHORITY AS AN EQUAL BRANCH OF STATE GOVERNMENT, THE LEGISLATURE MAY CONDUCT ANY LEGAL REVIEW OR FISCAL ANALYSIS THAT IT CONSIDERS NECESSARY TO EFFECT THE PURPOSE AND INTENT OF [SECTIONS 1 THROUGH 8]. THE GOVERNOR, THE DIRECTOR OR CHIEF EXECUTIVE OFFICER OF ANY AGENCY WITHIN THE EXECUTIVE BRANCH, OR ANY OFFICER LISTED IN ARTICLE VI, SECTION 1, OF THE MONTANA CONSTITUTION SHALL, UPON REQUEST BY THE LEGISLATURE, IMMEDIATELY PROVIDE ANY INFORMATION PREPARED, COMPILED, DEVELOPED, DETAILED, DESCRIBED, REFERENCED, ANALYZED, REPORTED, OR IN ANY OTHER MANNER CONSIDERED IN CONJUNCTION WITH [SECTIONS 1 THROUGH 8].

(2) IN RECEIVING THE INFORMATION DESCRIBED IN SUBSECTION (1), THE LEGISLATURE IS BOUND BY THE PROVISIONS OF ARTICLE II, SECTIONS 9 AND 10, OF THE MONTANA CONSTITUTION.

(3) FOR THE PURPOSES OF THIS SECTION, THE LEGISLATURE INCLUDES THE SENATE AND THE HOUSE OF REPRESENTATIVES, ACTING JOINTLY OR SEPARATELY, AND INCLUDES THE LEGISLATIVE COUNCIL.

(4) THE LEGISLATURE MAY REQUEST THE ASSISTANCE OF ANY STAFF EMPLOYED BY THE LEGISLATURE.

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

-END-

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 27, 1995, at 8:30 A.M.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: Sen. Ric Holden (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 167, SB 218
Executive Action: SB 66, SB 174, SB 192, SB 203

EXECUTIVE ACTION ON SB 66

Motion: **SENATOR LORENTS GROSFIELD MOVED THAT THE AMENDMENT AS CONTAINED (EXHIBIT 1) BE APPROVED.**

Discussion: **SENATOR GROSFIELD** explained his amendment, saying that he questioned the word "state prison," and wrote the amendment to clarify that.

Vote: The **MOTION CARRIED UNANIMOUSLY** by oral vote.

Discussion: **SENATOR REINY JABS** was concerned about the overcrowding of prisons. He said he would favor 3 strikes over 2 for that reason.

SENATOR LARRY BAER said he liked 2 strikes, and would be willing to amend the bill to 3 if they would put robbery and arson back in.

SENATOR GROSFIELD had the same concerns about filling the prisons and adding to the debt down the road and for that reason supported eliminating arson and robbery. Now they were down to heinous crimes and 2 is plenty, he said.

SENATOR MIKE HALLIGAN said he signed on the bill but was now unable to support it after reading about what is happening in other states. We would automatically build a new prison every 7 to 10 years, he said. He thought the public would not want that nor to hamstring the prison personnel. He supported 3 strikes because of the cost.

CHAIRMAN BRUCE CRIPPEN discussed 2 for some and 3 for some.

SENATOR BAER agreed that new prisons would cost money, but reminded everyone that pain and misery and suffering had costs, too, and that the people would rather spend than suffer the grievous harm perpetuated by offenders. He suggested going through the bill and deciding on each offense.

CHAIRMAN CRIPPEN said that by the consensus of the committee deliberate homicide would remain two strikes.

Motion: **SENATOR GROSFIELD MOVED THAT MITIGATED DELIBERATE HOMICIDE BE CHANGED TO THREE STRIKES AND YOU'RE OUT.**

Vote: The **MOTION CARRIED** with six members voting aye.

Motion: **SENATOR GROSFIELD MOVED THAT KIDNAPPING BE AMENDED TO THREE STRIKES.**

Vote: The **MOTION CARRIED** with **SENATOR JABS** voting no.

Discussion: **SENATOR JABS** said he would prefer to leave kidnapping out altogether.

Motion: **SENATOR BAER MOVED TO BRING ROBBERY BACK INTO THE BILL WITH A THREE STRIKE PROVISION.**

Motion: **SENATOR HALLIGAN MADE A SUBSTITUTE MOTION TO INCLUDE ROBBERY AND ARSON.**

Discussion: **SENATOR GROSFIELD** asked **SENATOR HALLIGAN** about the Georgia study, if they included robbery and arson, to which he replied they included violent offenses, which ones he didn't know.

SENATOR GROSFIELD told the committee that robbery and arson accounted for 58 per cent of the cases. He was hesitant about

the expense, but thought that it could be taken out if there was a problem some years down the road.

SENATOR BAER said that the crime of robbery can result in a murder charge or any number of subsequent happenings in the course of the crime, either to the perpetrator or the intended victim.

SENATOR SUE BARTLETT said a memo from Rick Day, Department of Corrections, showed a substantial increase in their budget already. 1994 was a record year for admissions. They are projecting a 30 per cent increase in FY 96 that will be added to the funding, at an estimated 9 million dollars in General Fund for FY 96 and 10 million in FY 97. This is not building money, she said.

SENATOR SHARON ESTRADA guessed that she and **SENATOR AL BISHOP** probably live in one of the highest crime districts in the state. People are tired of the crime and abuse and they want the legislature to be tough on crime.

Vote: The motion carried 6 to 4 on an oral vote to amend the bill to include robbery and arson at three strikes.

Motion/Vote: To leave intercourse without consent at two strikes, was agreed to unanimously by oral vote.

Motion: **SENATOR HALLIGAN MOVED TO INCLUDE AGGRAVATED ASSAULT, BUT NOT FELONY ASSAULT, FOR THREE STRIKES TO THE AMENDMENT.**

Vote: The **MOTION CARRIED UNANIMOUSLY** by oral vote.

Discussion: Discussion followed about the combinations of charges and which would be two or three strike offenses.

CHAIRMAN CRIPPEN with Valencia Lane clarified that in no event shall it be interpreted that there be allowed more than three strikes, or any combination thereof. So, for example, if there was arson twice and aggravated kidnapping, you're out, he said. If you have deliberate homicide and arson, you're not out, because you haven't received two strikes on one or three on the other, he explained, but if you have homicide, arson and robbery, you're out.

SENATOR BAER asked for clarification, if any one of the offenses is committed, you're out, whether it is a 2- or 3-time offense. If a person committed two 2-time offenses and one 3-time offense, he would be out. The group agreed with the senator.

SENATOR BARTLETT questioned the truth-in-sentencing provision. She thought that as a result, there would be more people in prison and from a financial standpoint, they may want to reconsider looking at aggravated assault or arson.

John Connor and Ted Clack of the Department of Corrections and Human Services explained sentencing, parole eligibility and the impending changes of the truth-in-sentencing legislation.

Motion: **SENATOR BAER MOVED THAT SB 66 DO PASS AS AMENDED.**

Vote: The **MOTION CARRIED UNANIMOUSLY** on a oral vote.

{Tape: 1; Side: B; Approx. Counter: 2.1}

EXECUTIVE ACTION ON SB 174

Motion/Vote: **SENATOR STEVE DOHERTY MOVED THAT SB 174 DO PASS.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: **Valencia Lane** explained that there were no amendments to this bill but there was a question raised about the grant of immunity and whether or not it needs a 2/3 vote requirement. She said she had talked to Greg Petesch and they came to the conclusion that it did not, and that's why the drafter didn't put in a 2/3 vote requirement. This is not a new grant of governmental immunity, but rather an extension to private citizens, she said.

EXECUTIVE ACTION ON SB 192

Motion: **SENATOR DOHERTY MOVED THAT SB 192 DO PASS.**

Discussion: **SENATOR GROSFIELD** asked the extra dollar amount to which others announced, "$16,000." So the total would be $62,000, he asked. He was concerned about the upcoming attorney generals coming in for the same amount.

CHAIRMAN CRIPPEN expressed his opinion that he felt the individual was well worth it and wondered why good people stayed in state positions.

SENATOR JABS asked that it was based on counties of 30,000 or more, to which **the Chairman** explained that in smaller counties the position was part-time and they had their own practice.

SENATOR BAER reminded everyone that the average salary in Montana is $16,000 and asked that they consider that in all measures.

SENATOR DOHERTY said that this position requires someone of incredible expertise and that John Connor prosecuted all the cases after the prison riot. The complexity and ability to put those cases together is very rare, he said. In terms of getting tough on crime, this is one of the costs, he maintained. We have to have money for prisons, but also money for prosecutors to put

the criminals in prisons and declared this money a bargain.

SENATOR JABS said that the argument for teachers was more money to get the best people and it did not happen.

CHAIRMAN CRIPPEN said that the legislators are the employers and they must strive to get good people in the positions.

SENATOR BAER said that he was directed by the people that voted him in to reduce spending. There are only three other states in the union that have more government employees per capita than Montana, he said. He said his pledge took precedence over the need to raise the person's salary.

CHAIRMAN CRIPPEN said he understood and that no one would be criticized for their opinions. He also said that they had an obligation to the people to make sure that their business, government, is run in a fair and efficient manner. In order to do that, you have to have good people, he said.

SENATOR BISHOP guessed Mr. Connor would stay in the position one way or the other, but said he was going to vote "yes" on the bill because he was an extraordinary person and it would not be fair.

SENATOR ESTRADA questioned if it would be more fair if half the people on the committee didn't work with him, since many were lawyers.

CHAIRMAN CRIPPEN said that would be true in any business and the determination of keeping good employees.

SENATOR BARTLETT said that this person works for the state in a position comparable to a County Attorney and it is a question of equity in terms of responsibility and authority. In fact, on occasion, particularly in the prison cases, he stepped in and carried out the duties of the County Attorney because it was beyond the resources of that small county to prosecute five capital cases. When the first murder in Judith Basin County occurred, **Mr. Connor** and his staff fulfilled the function of the County Attorney. This position functions as a defacto County Attorney.

SENATOR GROSFIELD agreed. He said he carried the bill to raise County Attorneys salaries last session and said it was an oversight that it was not included.

SENATOR DOHERTY said that many "get tough on crime" measures would be more glamorous and make better headlines, but prosecutors had to have the tools to help fight crime and it was very important.

Vote: The **MOTION CARRIED** on an oral vote with 8 senators voting aye and 3 senators voting no.

EXECUTIVE ACTION ON SB 203

Motion: **SENATOR GROSFIELD MOVED THAT SB 203 DO PASS.**

Discussion: **SENATOR GROSFIELD** explained this water rights compact bill. He said he wanted everyone to understand that tribal rights are far superior to anything in this bill.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

{Tape: 2; Side: A; Approx. Counter: 00}

HEARING ON SB 167

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT, Senate District 30 of Hamilton, introduced SB 167. He said the bill would request state agencies to review the federal mandates they operate under, requiring that federal mandates be implemented in the most cost-effective manner and to report to the Governor through the budget office on those mandates. He introduced a grey bill **(EXHIBIT 2)** which, he said, would substantially change the paperwork and the manpower needed to implement the bill. As a courtesy he prepared the grey bill so that the committee would not have to figure out how the amendments interfaced with the bill **(EXHIBIT 3)**. Some of the amendments significantly alter the fiscal note, he said, in his reductions of an ambitious reporting procedure. The bill was written to help Montana identify new areas where primacy should be established, he said, to safeguard the customs, rights and needs of Montanans. The bill was not intended in any way to sever relationships with the federal government, but rather to be a starting point in determining what the role federal government should have in the every day role of average Montanans, the senator explained.

Proponents' Testimony:

Gordon Morris, Director of the Montana Association of Counties (MACO) said that his organization wanted to support SB 167 because they have been active participants at the federal level to get legislation passed to require federal funding of all federal mandates. He encouraged the review of the mandates as set forth in the bill to determine their existence and ultimate impacts on the state. He thought it necessary from the standpoint that the state's principle budget officer doesn't think there are any mandates, and this should be proven once and for all. He proposed striking the language in the amendment that makes reference to the fiscal analyst's office.

Leo Giacometto represented the Governor's Office. He said they hadn't seen the amendments as yet, but rose in support of the concept. Their concern would be what happens in the amendments dealing with the fiscal impact and how to go forward with it.

Alec Hansen, Montana League of Cities and Towns, said that his organization felt it was vitally important for the state to send a message to Washington D.C.; we have had enough of the games being played there. SB 1 is anti-mandates legislation, sponsored by Idaho and Ohio senators, to stop the imposition of costly mandates on state and local governments, he said. In the past, he said, mandates were not a problem until the federal money dried up. He said if the EPA came to Helena and told them to build a sewage treatment plant, they also provided the grant to fund that project, which was a workable solution. It connected power and responsibility. Now we have the power of the federal government imposed on state and local governments, without the responsibility to fund these decisions. It costs the taxpayers and ratepayers in the state a considerable amount of money. For example, he said the EPA several years ago was considering a rule that would have required all cities and towns to treat storm water. They did a calculation and if that rule had been implemented, it would have cost an estimated $10,000 per year per household in the city of Helena. We don't wish to tear down the EPA, he said, but there has to be logic, common sense and a way to connect the cost with the benefit of the people.

Jim Kembel, representing the City of Billings, went on record in support of SB 167. He submitted a graph **(EXHIBIT 4)** which shows environmental laws that were impacted at the local level from 1910 to 1990. He supported **Mr. Hansen's** stand.

Discussion: **Beth Baker, Department of Justice,** spoke to the committee as neither opponent nor proponent, and explained an issue she discussed with **SENATOR BENEDICT.** She said the Department of Justice wanted to be sure that the legislature doesn't unintentionally create litigation against the State of Montana by individuals who do not think they're making a good faith effort to review federal mandates. On page 1, line 26-27 and in Section 4, language should be added, she said, that nothing in the act is intended to create a private right of action so that the Attorney General isn't faced with lawsuits by people thinking we should sue the federal government for imposition of the mandates. Otherwise, they did not have a problem with the bill, she said. She gave written suggested amendments for page 2, line 29. **(EXHIBIT 5)**

Opponents' Testimony:

Deborah Smith, an attorney from Helena, speaking on behalf of the Sierra Club, spoke in opposition to SB 167. She expressed surprise by the nature of the bill and the hostility toward unfunded mandates from the federal government since Montanans receive more in federal benefits than they pay, she said. The

issue isn't so much the reporting requirements, she said, but that the statement that Montana is somehow on a sovereign par, or equal, to the federal government, and she that was not the case. The language in Section 2 questions the authority of the U.S. government to regulate matters that fall directly within the power of Congress under the commerce clause of the Constitution, not the Congress acting outside of its bounds, she explained. She submitted written testimony **(EXHIBIT 6).**
The statutes listed in the bill are properly regulated by the federal government, she argued. She told the committee they were privileged to live in a country where everyone had the same public drinking water standards, the same solid hazardous waste disposal standards, and the same interstate highway safety regulations. She asked that the bill not come out of the committee.

Helen Christiansen, representing the Montana State AFL-CIO, read written testimony submitted by Don Judge, Executive Secretary (EXHIBIT 7).

Ted Lange, Northern Plains Resource Council, presented written testimony and read the following: (EXHIBIT 8).

Christine Kaufman, Executive Director, Montana Human Rights Network, said that her organization is a non-profit, private corporation whose mission is to help communities respond to bigotry, hatred and intolerance across Montana, representing about 3,000 people. She clarified that they were not part of state government. She said they would rather have state employees investigating discrimination cases and responding to Montanans instead of being engaged in bureaucratic activities that this bill would require them to do with the reporting and searching. She was concerned that this bill would affect civil rights laws. If the bill had been in place 125 years ago, she thought that the end of slavery would have been considered a federal mandate and would have been questioned. Thirty years ago the order to integrate public schools would also have been so considered, she said. She said George Wallace's primary argument on the steps of the schoolhouse refusing entrance to black students' was of states' rights. SB 167 ignores 225 years of Constitutional interpretation and case law on the appropriate role and function of the governments and ignores the lessons of the Civil War. The U.S. Constitution is a growing document keeping pace with the growing world, she said, and we can't go back to the "original Constitution," where only white male property owners could vote and black people counted for 3/5 of a person. The bill will be challenged in courts, wasting hours of government employee time and state money. She urged the tabling of the bill.

Brad Martin, director, Montana Democratic Party, said that while the Montana Democratic Party is a strong and steadfast advocate of states' rights, they stand strongly opposed to SB 167. Many of the statutes in the bill go to the heart of what government

does best, he said, to protect the general welfare of the people while providing a level playing field on which both business and state government can operate. The number one complaint they hear about government is when it is inconsistent or irregular in its approach to governing. He said the bill takes the approach that to compete with third world countries, we have to be a third world country. He said it drew one other interesting conundrum: at the point that we decide that we are going to secede from the union, our responsibility, as a participant, has the interesting difficulty of saying, "which of the other federal mandates should other states abide by?" He suggested opposition to SB 167.

Ed Caplis, Executive Director of the Montana Senior Citizens' Association (MSCA), spoke on behalf of the 6,000 members of the organization in expressing opposition to the bill. They see the bill as an assault on the Older Americans Act and the nutrition programs that help other Montanans. They also see it as an assault on our government, he said. He urged a table resolution.

Jim Jensen, representing the Montana Environmental Information Center, said fraud is being perpetrated across this country in the name of unfunded federal mandates, environmental laws and laws. Montana receives far in excess of anything that could be called an unfunded mandate to help with clean water, air and superfund programs. People have been willing to pay for sewage and water systems, he said, and the Congress has created a loan program for communities. Montana has the Treasure State Endowment Program for these projects. These programs keep us healthy and protect individuals, and they also create an enormous amount of employment. He said many companies in Montana have derived benefits from these programs.

<u>Questions From Committee Members and Responses</u>:

SENATOR JABS asked **Ms. Baker** about her statement that the language would be challenged in court and asked her to elaborate.

Ms. Baker said that on Page 1, Lines 26-28 say that federal mandates we think are contrary to federalism and self-determination must be identified and countered. Then, on Page 4, Section 4 of the bill, it put the duty on state officials to implement the federal law in good faith and with a critical view toward federal regulations that are inconsistent with Montana policy. Her concern is that an individual who believes that the state has not effectively countered an unfunded mandate or has not undertaken to implement the mandate in good faith, could sue the state or the Attorney General to compel us to ignore the federal mandate. The language she suggested is to express the legislature's intent that this act does not create a private right of action so that regardless of the legislature's policy about mandates, they would not be called upon to expend more money in defending litigation about them.

CHAIRMAN CRIPPEN asked **SENATOR BENEDICT** if some of the questions posed by the opponents were addressed in the grey bill.

SENATOR BENEDICT answered "yes" and "no". There were comments concerning the substance of the bill, and these were not. The grey bill basically addressed the mechanism that gathers the information for the Governor.

The hearing adjourned for the members to join the Joint Session for the State of the Judiciary at 10:50. The meeting resumed at 11:50.

Questions from the committee:

SENATOR BAER told the sponsor that he understood the bill might create an economic hardship for those who currently exploit the areas the bill purports to eliminate, however, he asked if the bill would interfere or violate people's civil rights in reference to George Wallace's stand on the school steps?

SENATOR BENEDICT said the bill is nothing more than the provision of legislative intent for the Governor to review federal mandates to see where we could develop our own programs, to either compliment federal programs or establish primacy. He did not understand where the secession idea was coming from. The sky wasn't falling, the Governor didn't need to order out the State Militia to guard the borders against federal intrusion, and we aren't asking to secede, he said. It merely asks the Governor to review the mandates to see if we could develop something more cost-effective and consistent with Montana policy.

SENATOR BAER further questioned other allegations in regard to secession from the union from the Montana Democratic Party, and the possibility of offending the rights of older Montanans by the Montana Senior Citizens' Association. He had difficulty finding any implication in the bill for these serious allegations.

SENATOR BENEDICT replied that the person making the inflammatory remarks was not in the room, but that the senator needed to ask him.

SENATOR GROSFIELD asked the sponsor on Page 1, line 27-28, or on the grey bill Page 2, line 27 to explain "encountered" language.

SENATOR BENEDICT said that his intention was to give latitude to the Governor when asking the agencies who develop programs to consider the consistent policies of Montana as opposed to those of the federal government.

SENATOR GROSFIELD wanted to clarify that it was not the sponsor's intention that they were talking about litigation in every case, but rather giving the Governor discretion.

SENATOR BENEDICT said that the senator's comment was the whole scope of the bill, giving the Governor discretion.

SENATOR GROSFIELD further questioned page 8 of the grey bill, going to the question of whether the state could appropriate money, and had listed four items. Was is his intention, he asked, that if the legislature finds any one of those things they could enact the appropriation, or did he think more in terms of all four of them?

SENATOR BENEDICT said he was trying to provide some guidelines that would set out what we felt our policy should be in the state regarding public health, safety and welfare and cost-effective implementation of the mandates. All four items need to be taken in conjunction, he said.

SENATOR DOHERTY asked for an updated fiscal note that would take into account the proposed amendments.

SENATOR BENEDICT said that they were not ready but that the preliminary figures he received were around 55,000 to 60,000, down from the original estimate of one million dollars.

SENATOR DOHERTY further questioned if state agencies are able right now to question federal mandates and whether it fits in with Montana?

SENATOR BENEDICT said that they do compile a list of the federal programs in an appendix to the Governor's budget in the Office of the Budget Program and Planning, but that they do not determine policy.

SENATOR DOHERTY wondered about the oversight of the legislature and asked if they thought the Governor had taken an incorrect action or hadn't taken any action when he should have. Who wins if a conflict exists between the two entities?

SENATOR BENEDICT directed him to Section 8 of the grey bill.

SENATOR DOHERTY asked if the legislature was to be in conflict with the Governor, would it have to go to the Governor for information in the Budget Office. He worried about restricting its ability to act as an equal branch if they would have to use the Governor's figures and they would not have their own figures.

SENATOR BENEDICT said he thought he could see where he was going with the question and he would rather avoid it. But he said there was too much inertia, and he wanted to put these matters into the hands of the executive who was here year around to do something. The legislature can put into statute what they want if it does not believe the executive branch is going in the direction they want, he said.

SENATOR BARTLETT asked about Section 2, and asked if it would have to be both inconsistent with Montana policy and exceed the lawful authority of the federal government.

SENATOR BENEDICT said that anything done in the legislature is open to interpretation, and that's what the courts are for. Although he hoped this would not get that far, but he anticipated it being both.

SENATOR BARTLETT asked about Section 4, Subsection 2, how a state agency would be authorized to develop a state program to respond to mandates.

SENATOR BENEDICT said the intent was to speak to the executive branch agencies of state government that work with federal mandates to develop state programs that are required. Perhaps she was taking a different spin, he said, to "counter" mandates, but that was not it. He said it was not his intent to have the agencies decide how to respond, but rather to give the information to the Governor and he would decide how to respond.

SENATOR BARTLETT asked about Section 5, Subsection 2a (iv), which talks about benefits to local government and business, and wondered if he would object if she struck "business" and inserted "citizens." She thought it would single out one sector of the society to benefit.

SENATOR BENEDICT said citizens are covered when they said "benefits state and local governments." Those are the agencies of the citizens, he said, and business also suffers certain burdens under federal regulations that need to be addressed.

SENATOR BARTLETT asked him to talk further about the sections of request for information and recommendation, those areas most changed in the grey bill.

SENATOR BENEDICT said he would probably ask that they strike Section 6 in its entirety but the first Subsection in Section 7. His intent was to ask for the incorporation of ideas from different states, he said, and what works somewhere else may not work here. He said he was not interested in going out to every Constitutional lawyer and university professor who has an interest in Constitutional law to determine where we are. That's the executive's prerogative once he or she receives the reports. All the bill does, he said, is get the information to the Governor and give him some legislative intent as to the fact that we would like to vigorously pursue the opportunity to develop programs consistent with the state needs.

SENATOR DOHERTY asked about Section 7, Subsection 2. What did he want them to understand about Montana's customs and cultures, he asked. Great Falls would be different than the Blackfeet Indian Reservation, he said.

SENATOR BENEDICT answered that it gives the Governor that call, as the representative of all the people of the state, so that he can make a judgment call.

SENATOR GROSFIELD asked if he intended to include the next budget or every budget from here on out.

SENATOR BENEDICT replied that the intent would be the next budgeting cycle and subsequent budgets.

SENATOR HALLIGAN asked what state the laundry list came from.

SENATOR BENEDICT said the federal acts and rules and regulations were compiled by the Legislative Council when he asked them to go through as many as they could pull up immediately to give an idea as a point of reference.

SENATOR HALLIGAN asked if Colorado had the same bill, to which he said no.

SENATOR HALLIGAN said that he saw nothing on economic development administration, nothing from small business, nothing on banking and he wondered if he picked the ones here for a reason or they could add to them.

SENATOR BENEDICT said he specifically asked that it say, "the terms include, but are not limited to the following."

Closing by Sponsor:

SENATOR BENEDICT said that the language in the bill is not rhetoric and is not inflammatory, it is just a statement that the people of Montana are not comfortable with the encroachment of the federal government in the affairs that should rightfully be left to the people of Montana. The business of states' rights won't be settled in one, two or five years, but may play out for years to come. The people want less government interference in their lives, he said, and this bill is a tool for the state to help develop its strategy in restoring the balance of powers between the state and the federal government. It doesn't require that any agency or any executive ignore any mandate, but rather it begins to assess where we should resist burdensome and unnecessary federal regulations so as to develop our own programs with an eye to what best meets the needs of our people. He urged passage of SB 167.

HEARING ON SB 218

Opening Statement by Sponsor:

SENATOR CHRISTIAENS, Senate District 23, Cascade County, sponsored SB 218, revising landlord/tenant laws. He turned the hearing over to the proponents with reservation for the closing.

Proponents' Testimony:

Greg Van Horsen, on behalf of the Montana Housing Providers, a group of approximately 1,100 rental property owners, spoke in favor of SB 218. He said there was a great deal of discussion last session regarding rental arrangements in mobile home parks. This bill is intended to make amendments to various notice provisions of that act as it relates to mobile home parks and amendments to determination issues as well, he said. Section 1 simply deletes unnecessary language regarding the owners discretion to draft rules. The next section requires a landlord who decides to promulgate rules applicable, to put them in writing. Section 2 addresses the termination of a rental agreement in the case of unauthorized pets being brought into the property, or unauthorized persons residing in a rental unit. Additionally, Subsection 2 clears up the notice requirements necessary in the event that a tenant does not pay his/her rent. Section 3 adds a new Subsection, he said, which provides for court expedition of the eviction process. This section is applicable after there has already been a judgement handed down from a court, he said. Section 5 allows the landlord to deduct additional items from a security deposit such as late charges, penalties, utilities and other monies owing to the landlord at the termination of the rental agreement. He explained Section 4, probably the primary reason for the opposition to the bill. This particular section is not meant to abrogate the issue of just cause eviction. It's very important to note that in Subsection 4 of the bill, in visiting with the sponsor and people he represents, he asked that the following change be made on Page 4, Line 28: to cross out the words, "any other reason," and add the words, "legitimate business reason." The change is meant entirely to address notice provisions required in an eviction based on a legitimate business reason, and that's it, he said. Subsection 7-24-436 provides a list of ten reasons a landlord in a mobile home can evict a tenant in the park, notice requirements and time requirements. Subsection j of the statute was added as an amendment during the deliberations by **SENATOR HARP** and was meant to be a catch-all for which a landlord could make evictions. It was intended to add flexibility to run the business, he said. A 90-day notice requirement previously located in Subsection 3 of the statute, was meant to be a requirement exclusive to any conviction based on any legitimate business reason. During the interim some confusion has arisen regarding Subsection 3. Some courts require 90 days for the written notice for the termination of rental agreement under any circumstances including the non-payment of rent. He passed out a training manual circulated in Kalispell which confuses the intent of the 1993 legislation. **(EXHIBIT 9).**

Mary McCue represented a group of mobile home park owners. She asked to speak to the Section 3 provision. The language was included in the bill at the request of the owners she represents and establishes a time frame by which the sheriff has to act upon a writ of assistance issued by the court. In an eviction action

of a tenant who is occupying a mobile home space, once the court has issued its judgement in favor of the landlord and has told the tenant to vacate the space, if the tenant does not, the landlord has to go back to the judge and ask for a writ of assistance. They would like to have a time frame set, she said. They are not creating a new remedy, this is being done. Her group approached the law enforcement people and they had no objection to the bill and felt they could comply with the ten day limitation.

Dan McLean, representing the Oakland Holding Company, owner of several mobile home parks in Montana, remarked on provisions in Section 4, the proposal to add back in "legitimate business reason" for an eviction. In a general landlord/tenant law, he said, there is a 30-day right of termination without cause and that has been a workable solution. In a mobile home park, owners should have the same kinds of fair protections as any other kinds of landlords of property, the right to terminate tenancy, without having to justify in each cases the reason they might to do that. It's important to leave language in providing for a 90-day termination. This is a responsible bill that clarifies the law, he said. There may be a shortage of spaces, he contended, and that's why they need whatever time they need to get out, but that flies in the face of the property owner to control their property. To invite people to build more parks, there should not be restrictions to their ability to derive benefit and profit. The bill rewards tenants who are careful and responsible and pay their rent, and provides incentives for others to get into the business.

Rhonda Carpenter, Chairman, Montana Housing Providers, which consists of three statewide landlord organizations, spoke to the changes in Section 2. These are not a change in terms of the lease agreement, she said, In these circumstances the landlord and tenant have already agreed, in writing, to no pets and as to how many people will reside in the unit. This is simply shortening the time a tenant, who already knows he is in violation of the lease, has to correct the situation. Pets can do considerable damage in 14 days, she said, and this amendment will attempt to preserve the value of the rental by speeding the termination process. Sewer charges are lienable on property, she explained, so extra people increase the costs to sewers or holding tanks. She said they would appreciate a Do Pass recommendation.

Opponents' Testimony:

Andy Gardener, representing Montana People's Action, handed out written testimony (EXHIBIT 10). He maintained that SB 218 is not about simple technical revisions on the "good cause" laws written in the last legislative session, but rather an attempt to circumvent those laws.

Jim Fleschman, Executive Director of Montana People's Action, addressed the law and objections of most mobile home owners. With regard to Section 2, he said they had no problem if the rules were in writing, and not subject to interpretation. He questioned the pet provision since owners make the rules and furthermore pet damages more often than not occur in their own home, the mobile unit. What would constitute an unauthorized person, he asked, in his home? On the action for possession, he said, civil codes already provide for repossession, so why do the landlord/tenant laws require codification for civil procedures? The most damaging part of the bill is in the changes for reason for eviction and legitimate business reasons. Tenants demonstrated to the legislature that eviction was used as a management tool to get rid of people who complained about conditions in the court and wanted to improve it. Perhaps the landlord would find a person passing a petition a "nuisance," he said, and evict them for a good "business reason." This bill guts the "good cause" bill, he protested. He handed out a letter **(EXHIBIT 11)** describing retaliatory evictions of tenants who complain about court conditions. He also handed out information from **Klaus D. Sitte (EXHIBIT 12)** who wrote the good cause provisions, and has projected in his letter what this bill will do. The need has not been demonstrated to change a law only in effect for a year and one-half, he said, besides, no specific cases have been brought before the committee.

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Bruce Hietala, Missoula, Representing the Mobile Home Park Residents Association, told the committee that the intent of the good cause bill in 1993 was to prevent unjust evictions and he cautioned every member to review the information and not allow unjust evictions.

Lela DeCock, Belgrade, representing the Montana People's Action (MPA), said that she and her husband moved to the Bozeman area to attend school and because of the inflated real estate market, chose to buy a mobile home. They have been through several court hearings on an illegal eviction, she said. The rulings were in their favor including legal fees, which were all appealed. In November 1, 1994 the Supreme Court decided in their favor and the landlord still declares them evicted. She helped with the good cause legislation and says the landlord is angry about that. It would cost between $3,500 to $4,000 to move the mobile home. She said she and her family of five will be the first evicted if SB 218 passes.

Alice Janke, from Lexley Acres in Belgrade, Mt., also a Montana People's Action representative, said she represented 100 trailers. Two years ago she said she worked on the good cause and her landlord bragged that he did not need a reason to evict the people in their court. She had received threatening notes

taped to the door nearly every month, she said. She presented copies of these transactions **(EXHIBIT 13)** dated one year apart. She said that the past two years have been peaceful in the court, however, she had been in court with the landlord, won, and was re-evicted the following week. She is in litigation now. She urged opposition to SB 218 to give the people an opportunity to protect themselves.

Ron Grafft, Missoula, co-chairman of Travois Residents' Association and a member of the Montana People's Action, said that his association had been in litigation with the landowner for the past three years, and he felt if this legislation passed, most of them would be evicted. He asked for a Do Not Pass resolution to the bill.

Nancy Weinzettel, resident, Highwood Mobile Home Court in Great Falls, said she was a homeowner. She is also the chairperson of the Great Falls Montana People's Action, she said. She maintained that if the bill passed, there would be very little question that she and her son would be evicted. She said her court was a good place to live and she did not want to leave. She has been active in forming residents' associations in mobile home courts, and while this doesn't reflect on her responsibilities as a good tenant, the landlord perceives her as a threat because of her proactive stance in advancing mobile home residents' rights. The first to fall victim to this bill would be folks like her, she said, and the second group would be the average tenants that the landlord just doesn't like. She said they wanted to live without fear of eviction. Good landlords and good tenants have nothing to fear with the legislation passed two years ago, she said. She asked the committee to remember that her mobile home isn't mobile.

Bob Christiansen, Frenchtown, and Montana Peoples' Action member, said he had first hand knowledge of problems in mobile courts. He said they had gone through years of bad management, bad sewers and bad owners. They had lived in Leisure Park Trailer Court in Lolo for 13 years, and were then evicted because he joined a tenant association. He said if passed, the bill would allow landlords to evict for no reason. He said the landlords would try to convince the committee that they have no power over their property. He said that with passage of the bill, 110,000 people in mobile home courts will be right back where they started before the good cause law, at the mercy of the landlords.

Kenneth Van Stockum, resident of Countryside Village in Great Falls and a member of the Montana Peoples' Action, asked the committee to oppose SB 218. He said it was against the Constitutional rights of the people living in mobile home courts. There should be good cause for evictions, he said, and feared he would be evicted for his participation in residents' organizations and for his part in testifying on the bill.

Mike Payne, Missoula, a manufactured home owner, thanked the committee for the good deed they had done in passing the 1993 original good cause provisions. He said it was the only real protection he had against tyrannical landlords who would wish to use their personal power for personal reasons to cause him the devastating and irreparable harm of evicting he and his home to the streets. He implored them not to undo a good job of approving the good cause act. He said he believed **SENATOR CHRISTIAENS** to be an ethical and humane man who simply did not understand the implications of the bill and how much harm it could do.

Percie Jones, Missoula, tenant, spoke against SB 218. He said that passage of SB 218 would unjustly force the people to relive what they knew and fought so hard to change in the 1993 good cause legislation. He urged a "no" vote.

Edward Baron, Great Falls, Montana Peoples' Action, said he was a registered voter and represented about 500 people in Great Falls. He opposed SB 218, not only as a tenant, but because he felt it to be unfair and unconstitutional on grounds of personal dislike, because of being a Jew, Catholic or Indian. His presence at the hearing could be used to evict him. He told **SENATOR DOHERTY** that he had voted for him, and hoped he had reason to vote for him again.

J. B. Bennett, representing Montana Public Interest Research Group (MontPIRG) presented written testimony (EXHIBIT 14).

Another written document was submitted to the secretary (EXHIBIT 15) which contain letters from Mrs. Jo Nulliner of Great Falls and Karen Pester of Great Falls.

Questions From Committee Members and Responses:

SENATOR DOHERTY asked the sponsor whether or not it was his intent to remove the "just cause" provision that currently governs evictions for mobile home parks.

SENATOR CHRISTIAENS said it was not his intent, nor had ever been. He said an amendment had been started to add the wording, "of legitimate business reasons," which he believed would keep the language in the bill as it was passed in 1993. It would be added at the bottom of Page 4, Line 27, he said.

SENATOR DOHERTY asked one of the opponents, **Mr. Fleschman,** if with the addition of the language, it would satisfy him that the good cause provision was not being tampered with?

Mr. Fleschman answered that the Section 70-24-436 lists the specific good cause provisions. After the Section I it said, "or" and then it says simply, "legitimate business reasons." There was confusion around what is a "legitimate business reason," he said.

SENATOR DOHERTY said that "legitimate business reason" as it was written was current statute. He questioned if **Mr. Fleschman** wanted to get rid of a "legitimate business reason" in current statute.

Mr. Fleschman did know why it read "or" then, and not just "legitimate business reason."

SENATOR DOHERTY asked if the argument was with the current law and the current language, or is the argument with the amendment.

Mr. Fleschman said they were concerned with striking Section 3 on Page 5 and wondered why it was necessary. It is the interpretation of the author of good cause, he said, that with the striking of Section 3 in conjunction with the proposed Section J, the good cause reasons will no longer work.

SENATOR DOHERTY asked if **Mr. Sitte** was present, to which **Mr. Fleschman** replied that he was unable to be here.

SENATOR DOHERTY asked if it was the combination of those two things that they believe will remove just cause?

Mr. Fleschman replied to the affirmative.

CHAIRMAN CRIPPEN asked **SENATOR CHRISTIAENS** for clarification on the striking of the language on Page 1.

SENATOR CHRISTIAENS said that he thought there was misunderstanding and that the bill clarified all landlord/tenant law not just mobile homes.

CHAIRMAN CRIPPEN explained that in the hearings two years ago, they thought there was a distinct reason for having some reason for having regular landlord law and specifically separate provisions for mobile homes. The mobile home has a unique status and recognized the misnomer of saying they are actually mobile. So he asked the sponsor if he is saying there would be no separate provision for mobiles?

SENATOR CHRISTIAENS asked **Mary McCue** to respond. She said that during the last session there were two bills dealing with mobile homes and requiring the rules be in writing. She said this bill would expand the rule to all landlords not just mobile home park landlords, and would be for the protection of the tenants.

SENATOR CRIPPEN asked if there was any objection to this portion and it was determined that there was none among the witnesses. He then asked about Page 2, unauthorized pets. He questioned the pet damage in mobile homes, which are the renters' own homes.

Mary McCue answered that the trouble would be a large animal that is causing a lot of harm, and the landlords wanted to have this shorter time frame to take care of the problem. Also, she said,

two cats may have been allowed, and suddenly the people have 20 cats.

Rhonda Carpenter said that she teaches this law for the Commerce Department and she would explain it. This section was put in for apartments, not mobile homes, and it falls under rule violations. The items in this section are already pre-agreed upon in the contract and would be rules violations under just cause eviction. The pet issue would be one rule violation, not an eviction. In an apartment complex, they would be able to tell them they had three days to get rid of the pet or move; in the mobile home situation, as long as they got rid of the pet, it would be a rule violation and they would not be evicted, but one rule violation would go into their file.

SENATOR CRIPPEN questioned if 72-94-422 does not apply to mobile homes.

Rhonda Carpenter stated that it would apply as a rule violation if they did not get rid of the pet. If they insisted on keeping the pet, then yes, she said, eviction proceeding would start.

CHAIRMAN CRIPPEN further asked why it said three days?

Rhonda Carpenter stated that the three days was put in there because they already knew in advance that there were no pets allowed in this building or mobile home park. This is not a new rule, she said. A new rule would take the whole 30 days of notification, no change of terms in a lease. In this agreement, two adults have already signed a contract, then one adult chose not to comply with the lease agreement. The three days was put in there for the damage done to apartments, assuming that the majority of mobile home parks didn't have a rule that said you could not have a pet in your own house.

Jim Fleschman asked why, if it was only a rule violation, it would be written into statute that if you break the pet rule the rental agreement terminates?

Valencia Lane was asked her opinion by **CHAIRMAN CRIPPEN**. She said tht there was a specific section on Page 4, 70-24-436, which applies to mobile home parks, and it says you can only terminate the rental agreements for certain reasons, and there has to be repeated violations of the rule. She thought that the bill sets up a conflict between the two sections because 70-24-422 specifically says, "in the case of a breach involving a pet or an unauthorized person, the lease terminates in three days after three days notice". One way to alleviate that problem would be to amend one or the other. As it stands, there is a conflict, she said.

CHAIRMAN CRIPPEN asked about Subsection C, unauthorized persons. He realized that from the landlords' point of view, they are renting to specific people in an apartment. He asked for

comment.

Melissa Case, Montana Peoples' Action, said those cases were covered under legal agreements and they did have legal recourse. This is not necessary since it's covered under the contract and if there's a violation, it's a breach of the contract.

Rhonda Carpenter said that both the pet rulings and this question are covered under a 14-day notice, but they wanted the time on the ability to give the notices, shortened to three days.

CHAIRMAN CRIPPEN agreed that pumping tanks for extra persons etc., would go toward expense, not damage. He suggested perhaps additional fees for the extra people would be reasonable.

Rhonda Carpenter replied that The Human Rights Commission will not allow them to charge more money per person. It's against the law in the U.S. because of human rights and familial status.

Melissa Case pointed out that the case of the drunken brother-in-law would be a violation covered under a health and safety provision, for which there is 24-hour notice. This applies to mobile home parks and could be extended to rental units, she said.

The CHAIRMAN asked for an example for a landlord to terminate the rental agreement 15 days after the tenant has received notice as seen in Subsection 2a on Page 3.

Jim Fleschman said that they did not understand the intent.

Rhonda Carpenter explained that if she owned an apartment complex and a tenant forgot to pay their rent, she would notify them to pay in three days or get out. The mobile home landlord gives the notice and it takes 15 days to get out or pay. They wanted to make the mobile home owners noticing time shorter, not the moving time.

Melissa Case said she would concur.

Jim Fleschman said the problem is that people have a stationary piece of property and are not likely to run off, but many times tenants have agreements to pay on payday and the landlord can renege on those verbal agreements.

CHAIRMAN CRIPPEN asked why in the world anyone would have a verbal agreement.

CHAIRMAN CRIPPEN questioned the writ of assistance on Page 5. If it is already case law, why do you want it here, he asked?

Jim Fleschman said that they considered this item to be a tool of intimidation. He also said it was unnecessary. Landlords have the right to take possession. Why would it need to be written in

landlord/tenant law any more than it would be written into an automobile dealer/sheriff contract.

The **Chairman** asked if **Jim Fleschman** found it unreasonable for the landlords to have the right of the writ of assistance. **CHAIRMAN CRIPPEN** said the writ of assistance is after the fact; everything is done. But if the tenant had said he won't move, the writ of assistance is just a direction from the court to the sheriff to help remove the tenant. If there is clarity in this part of the law, he said, he didn't see where anybody would object to this. He asked for additional research.

Jim Fleschman said no other businesses have that direction written into codes specifying the assistance of law enforcement in repossession or conviction.

Mary McCue said that was the point of the legislation, to address the sheriff's direction. They would already have the judgement against the tenant when this would start. This provision was really directed at the sheriff's office in determining a time frame, which varies from department to department.

Melissa Case said that it should be in the civil procedure codes, not the landlord/tenant code, making it consistent for everyone.

CHAIRMAN CRIPPEN asked the sponsor about the amendment on Page 4. He asked if he took out "legitimate business" and intended to put it back?

SENATOR CHRISTIAENS stated that yes, he intended to. It was a mistake, he said, to take it out and not the intent to do away with the good cause.

Rhonda Carpenter said that their understanding was that last time with **SENATOR HARP'S** amendment, all the rule violations, etc., would fall under landlord/tenant law. If they did not correct them, they moved. If they did, it was a rule violation and they had to get two to be asked to move. The "legitimate business" reason that **SENATOR HARP** offered was all on its own, but since then, interpretations of the courts have been varied, and a number of courts are ruling that non-payment of rent is a good business reason to evict someone. However, when the tenants don't pay their rent, they get 90 full days to sit there without paying before they move. It is happening in a large number of courtrooms, she said. She said the landlords' association wanted the 90 days to be separate. Under 70-24-431, she said, which is retaliatory conduct by a landlord to be prohibited, it is the law that if a tenant complains of a health problem or joins a tenant organization or complains of a rule violation, and the landlord tries to evict them or raise their rent in the next six months, they have a presumption of retaliatory action and have grounds in court to prevent the eviction.

Jim Fleschman said that in the meantime you've lost your mobile home space and are forced to hire an attorney. He reminded everyone of the Yellowstone County Health Department letter in which they acknowledge that the law is being broken with some regularity.

Melissa Case wanted to strike "the legitimate business reason" as it is separated out in Section J. Another thing is the change of use as a separate issue in this law, she said.

Rhonda Carpenter said they asked for the clarification because 90 days for non-payment of rent is a long time to wait.

Jim Fleschman said then they should have said "except in the case of the non-payment of rent." Why was the Section 3 eliminated?

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Mary McCue said that she did not think there was agreement. They were saying that unless there was a legitimate business reason, that is the only category that the 90-day requirement would pertain to, but as Mr. Sitte said, they think it should be 90 days notice in all circumstances when you're removing a mobile home.

Closing by Sponsor:

SENATOR CHRISTIAENS told the committee that it was never his intent to do away with the good cause portions in the bill. He thought that by adding "legitimate business reasons" which they gave verbally would clarify that. He promised his continued work with the staff attorney. He said that Section 2 clarified a written agreement already in place and he expressed amazement to have opposition to the bill. Retaliatory action was extremely clear, he said, as set forth in Section 70-24-431, and anyone being evicted because of participation in this hearing should be assured that it was not the case.

ADJOURNMENT

Adjournment: **CHAIRMAN CRIPPEN adjourned the hearing at 1:50 p.m.**

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BBC/jf

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1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL EXEC. SESSION - 8:30 DATE 1-27-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN			✓
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL 10:07 DATE 1-27-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		✓
MIKE HALLIGAN	✓		
RIC HOLDEN			✓
REINY JABS	✓		
LINDA NELSON	✓		

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-

Renumber: subsequent subsections

11. Page 1, line 23.
Following: "consent"
Strike: "; or"
Insert: "."

12. Page 1, line 24.
Strike: subsection (g) in its entirety

13. Page 1, line 25.
Insert: "(b) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;
(ii) 45-5-202(1), aggravated assault;
(iii) 45-5-302, kidnapping;
(iv) 45-5-401, robbery;
(v) 45-6-103, arson."

14. Page 1, line 25.
Strike: "46-18-222 and"
Following: "46-23-210"
Insert: "and subsection (3) of this section"

15. Page 1, line 28.
Following: "reason"
Insert: ", except medical reasons,"

16. Page 2, line 3.
Insert: "(3) If the person was previously sentenced for either of two or three offenses listed in subsection (1), as applicable, pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the person's present sentence.

(4)(a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 66 (first reading copy -- white), respectfully report that SB 66 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 4.
Strike: "TWO"
Insert: "A SPECIFIED NUMBER OF"

2. Title, lines 5 and 6.
Strike: "A STATE"

3. Title, line 8.
Following: "45-5-103,"
Insert: "45-5-202,"

4. Page 1, line 13.
Following: "(1)"
Insert: "(a)"

5. Page 1, line 14.
Strike: "46-18-222"
Insert: "subsection (3)"

6. Page 1, lines 17 and 27.
Strike: "a state"

7. Page 1, line 18.
Strike: "(a)"
Insert: "(i)"
Renumber: subsequent subsections

8. Page 1, lines 19 and 20.
Strike: subsections (b) and (c) in their entirety
Renumber: subsequent subsections

9. Page 1, line 21.
Following: ";"
Insert: "or"

10. Page 2, line 22.
Strike: subsection (e) in its entirety

Amd. Coord.
Sec. of Senate

that does not provide secure detention."

17. Page 3, line 3.
Insert: "**Section 4.** Section 45-5-202, MCA, is amended to read:
"**45-5-202. Aggravated assault -- felony assault.** (1) A person commits the offense of aggravated assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.
(2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:
(a) bodily injury to another with a weapon;
(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or
(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.
(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222 and [section 1]. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.""
Renumber: subsequent sections

-END-

SENATE STANDING COMMITTEE REPORT

January 27, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 203 (first reading copy -- white), respectfully report that SB 203 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

231238SC.SPV

SENATE STANDING COMMITTEE REPORT

January 27, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 192 (first reading copy -- white), respectfully report that SB 192 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

231236SC.SPV

SENATE STANDING COMMITTEE REPORT

January 27, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 174 (first reading copy -- white), respectfully report that SB 174 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

231234SC.SPV

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1-27-95 BILL NO. SB66 NUMBER #1

MOTION: Sen. Gros. moved amend. - unanimous -
Sen. Baer - DPAA

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		
LARRY BAER		
SUE BARTLETT		
AL BISHOP, VICE CHAIRMAN		
STEVE DOHERTY		
SHARON ESTRADA		
LORENTS GROSFIELD		
MIKE HALLIGAN		
RIC HOLDEN		
REINY JABS		
LINDA NELSON		

SEN:1995
wp:rlclvote.man

unanimous

Do Pass As Amd.

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1-27-95 BILL NO. SB 174 NUMBER 2

MOTION:

Sen. Doh - Motion - DP

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA	✓	
LORENTS GROSFIELD	✓	
MIKE HALLIGAN	✓	
RIC HOLDEN	✓	✗
REINY JABS	✓	
LINDA NELSON	✓	

SEN:1995
wp:rlclvote.man

unanimously passed 11 0

DO PASS

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1-27-95 BILL NO. SB 192 NUMBER 3

MOTION:

Sen. Doherty Motion - Do Pass

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD	✓	
MIKE HALLIGAN	✓	
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON		✓

SEN:1995
wp:rlclvote.man

8-3

Do Pass

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1-27-95 BILL NO. SB 203 NUMBER A

MOTION: SEN Grosfield Moved SB 203 DO PASS

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		
LARRY BAER		
SUE BARTLETT		
AL BISHOP, VICE CHAIRMAN		
STEVE DOHERTY		
SHARON ESTRADA		
LORENTS GROSFIELD		
MIKE HALLIGAN		
RIC HOLDEN		
REINY JABS		
LINDA NELSON		

SEN:1995
wp:rlclvote.man

Unan.

SB 66-1

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. -1
DATE 1-27-95
BILL NO. SB66

Amendments to Senate Bill No. 66
First Reading Copy

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
January 23, 1995

1. Title, lines 5 and 6.
Strike: "A STATE"

2. Page 1, lines 17 and 27.
Strike: "a state"

3. Page 2, line 3.
Insert: "(3)(a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

SB 167-1

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #2
DATE 1-27-95
SB167

Grey Bill -- First Draft
Not Suitable for Distribution, Reference, or Amendment
Senate Bill No. 167

A Bill for an Act entitled: "An Act providing for the review of federal mandates to state and local governments; requiring agencies to implement federal mandates in the most cost-effective manner; requiring a study and report on federal mandates; *providing for legislative review and oversight;* and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~5~~ 8] may be cited as the "Federal Mandates Act".

NEW SECTION. **Section 2. Legislative declaration.** (1) (a) In enacting [sections 1 through ~~5~~ 8], the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal

statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

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Not Suitable for Distribution, Reference, or Amendment
Senate Bill No. 167

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who

asserts the insufficiency.

(f) the provisions of [sections 1 through ~~5~~ 8] will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of [sections 1 through ~~5~~ 8] ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of [sections 1 through ~~5~~ 8] is to ensure that federal mandates implemented in Montana comply with state policy as established by the legislature.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through ~~5~~ 8], unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments. The term includes but is not limited to the following:

(a) the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended;

(b) the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended;

(c) the Federal Water Pollution Control Act, 33 U.S.C. 1151, et seq., as amended;

(d) the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et seq., as amended;

(e) the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et

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Not Suitable for Distribution, Reference, or Amendment
Senate Bill No. 167

seq., as amended;

(f) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended;

(g) the federal Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, as amended;

(h) the federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended;

(i) the federal Asbestos School Hazard Abatement Act of 1984, 20 U.S.C. 4011, et seq., as amended;

(j) the federal Brady Handgun Violence Prevention Act, 18 U.S.C. 921, et seq., as amended;

(k) the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701, as amended;

(l) the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended;

(m) the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., as amended;

(n) the federal, state, and local partnership for education improvement program, 20 U.S.C. 1751, et seq., as amended;

(o) the federal National Voter Registration Act of 1993, Public Law 103-31, as amended;

(p) the federal school lunch program and school breakfast program, 42 U.S.C. 1751 and 1773, as amended;

(q) federal social services and medicaid requirements, 42 U.S.C. 1396, as amended;

(r) federal highway safety programs;

(s) the federal Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, as amended;

(t) the federal Educate America Act, Public Law 103-227.

(2) "Legislative council" means the statutory committee established in 5-11-101.

(3) "Legislative finance committee" means the statutory committee established in 5-12-201.

NEW SECTION. **Section 4. State programs to implement federal statutes.** (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

NEW SECTION. **Section 5.** ~~**Legislative finance committee -- reports to legislative council**~~ **Requirement for appropriations -- reporting on federal mandates -- savings.** ~~(1) The legislative finance committee shall report to the legislative council regarding the proposed implementation of this section.~~

~~(2)~~*(1)*(a) If a state program is authorized or mandated by a federal statute, a state

appropriation for the program may not be enacted unless the legislature finds that:

(i) the state program is necessary to protect the public health, safety, and welfare;

(ii) the state program is necessary to implement the federal statute;

(iii) the operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the state, by local government, and by business; or

(iv) the state program benefits the state, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.

(b) Each state agency that makes a budget request for an appropriation for a state program authorized or mandated by federal statute shall include in its budget request *to the office of budget and program planning* citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The ~~legislative finance committee~~ *budget director* shall review the budget request and, *in consultation with knowledgeable persons,* determine whether additional state statutory authority is required in order to implement the state program. ~~and~~ *If additional statutory authority is determined to be required, the office of budget and program planning or an agency of the executive branch* shall make recommendations to the legislature ~~and the legislative council~~.

(c) The ~~legislature, after receiving a recommendation from the legislative finance~~

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SB 167

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Not Suitable for Distribution, Reference, or Amendment
Senate Bill No. 167

~~committee and the legislative council~~ *budget director, pursuant to subsection (1)(b) and in consultation with the attorney general*, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The ~~legislature~~ *budget director and the attorney general* shall exercise a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Enactment of a state appropriation for a state program constitutes the legislature's determination that the state program is necessary and that federal constitutional authority and state constitutional or statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.

(d) Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the office of budget and program planning ~~and the legislative finance committee~~ shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of the federal statute but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the office of budget and program planning ~~and the legislative finance committee~~ regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater

reductions in regulatory burdens. The office of budget and program planning shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in ~~its annual budget request to the legislative finance committee~~ *the governor's budget* based upon the information.

~~(3)~~*(2)* For purposes of this section, "state program" does not include any portion of a program that is funded with nontax or nonfee revenue, or both, that state authorities are required to administer in a trusteeship or custodial capacity and that is not subject to appropriation by the legislature.

NEW SECTION. **Section 6. Requests for information regarding federal mandates.** (1) The staff of the ~~legislative council and the office of legislative fiscal analyst shall jointly~~ *office of budget and program planning shall* prepare one or more requests for information regarding federal mandates on or before August 31, 1995. The requests for information must be directed to persons involved with or affected by federal mandates, including but not limited to the following:

(a) public and private institutions of higher education both within and outside Montana and individuals in the institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;

(b) attorneys in private practice who have dealt with federal mandate litigation or

EXHIBIT 2
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SB 167

research; and

(c) organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on local and state governments.

(2) The issues addressed in the requests for information issued pursuant to this section must include the following:

(a) identification of federal mandates expressing broad federal policies that would best be implemented on a state-by-state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;

(b) legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state's own policies;

(c) practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;

(d) recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and that is suited to the needs of each state; and

(e) possible funding sources for federal mandate efforts and opportunities for the state of Montana to match other funding sources or to cooperate with other entities in working toward federal mandate solutions.

(3) The requests for information prepared pursuant to this section must require that the initial responses be received by the ~~staff of the legislative council and the office of legislative fiscal analyst~~ *office of budget and program planning* by October 15, 1995. The staff of the ~~legislative council and the office of legislative fiscal analyst~~ *office of budget and program planning* may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(4) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the budget director may request assistance from the legislative finance committee or its staff or from the legislative council or its staff, but assistance is at the discretion of the legislative finance committee or the legislative council, as applicable.

NEW SECTION. **Section 7. Report -- recommendations.** (1) The staff of the ~~legislative council and the office of legislative fiscal analyst~~ *office of budget and program planning* shall examine the information received through the requests for information prepared pursuant to [section 6] and, based upon the information, shall ~~jointly~~ present a report to the governor~~, the legislative council, and the legislative finance committee~~ *and the legislature* on or before December 1, 1995, that includes the following:

(a) recommendations regarding:

(i) contracts that the ~~committees~~ *state* may enter into with specified persons or

entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; or

(ii) a request for proposals process to obtain bids for contracts to provide services regarding federal mandates, with the intent that the contracts be entered into on or before February 1, 1996, and that the results of any research or analysis performed under the contracts be received by the ~~committees~~ *office of budget and program planning* on or before July 1, 1996; and

(b) estimates of the cost of the federal mandate efforts ~~recommended by the staff of the legislative council and the office of legislative fiscal analyst~~ *submitted to the office of budget and program planning* under the provisions of this section and recommendations regarding any possible public and private sources of money to fund the efforts, including any appropriations by the legislature that may be required.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate *and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order*.

NEW SECTION. Section 8. Legislative review and oversight. (1) In exercising its

authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of [sections 1 through 8]. The director of the office of budget and program planning, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with [sections 1 through 8].

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council and the legislative finance committee.

(4) The legislature may request the assistance of any staff employed by the legislature.

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications

EXHIBIT 2
DATE 1-27-95
SB 167

that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

-END-

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 1-27-95
SB NO. 167

Amendments to Senate Bill No. 167
First Reading Copy

Requested by Senator Steve Benedict
Committee on the Judiciary

Prepared by Dave Bohyer
January 25, 1995

1. Title, line 6.
Following: "MANNER;"
Insert: "PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT;"

2. Page 1, lines 11 and 15.
Strike: "5"
Insert: "8"

3. Page 2, lines 23, 25, and 28.
Strike: "5"
Insert: "8"

4. Page 3, line 1.
Strike: "5"
Insert: "8"

5. Page 4, lines 26 and 27.
Following: "**5.**" on line 26
Strike: the remainder of line 26 through "**council**" on line 27
Insert: "Requirement for appropriations -- reporting on federal mandates"

6. Page 4, lines 27 through 29.
Following: "**savings.**" on line 27
Strike: the remainder of line 27 through "(2)(a)" on line 29
Insert: "(1)(a)"
Renumber: subsequent subsection

7. Page 4, line 30.
Following: "unless"
Insert: "the legislature finds that"

8. Page 5, line 9.
Following: "request"
Insert: "to the office of budget and program planning"

9. Page 5, line 11.
Strike: "legislative finance committee"
Insert: "budget director"
Following: "and"
Insert: ", in consultation with knowledgeable persons,"

10. Page 5, line 12.
Following: "program"
Strike: "and"

Insert: ". If additional statutory authority is determined to be required, the office of budget and program planning or an agency of the executive branch"

11. Page 5, line 13.
Strike: "and the legislative council"

12. Page 5, lines 14 and 15.
Following: "The" on line 14
Strike: the remainder of line 14 through "council," on line 15
Insert: "budget director, pursuant to subsection (1)(b) and in consultation with the attorney general,"

13. Page 5, line 16.
Strike: "legislature"
Insert: "budget director and the attorney general"

14. Page 5, lines 23 and 24.
Following: "planning" on line 23
Strike: the remainder of line 23 through "committee" on line 24

15. Page 5, line 28.
Strike: "and the legislative finance committee"

16. Page 6, lines 2 and 3.
Following: "in" on line 2
Strike: the remainder of line 2 through "committee" on line 3
Insert: "the governor's budget"

17. Page 6, line 9.
Strike: "legislative council and the office of legislative fiscal analyst"
Insert: "office of budget and program planning"

18. Page 7, line 6.
Strike: "staff of the legislative council and the office of legislative fiscal analyst"
Insert: "office of budget and program planning"

19. Page 7, line 7.
Strike: "legislative council and the office of legislative fiscal analyst"
Insert: "office of budget and program planning"

20. Page 7.
Following: line 9
Insert: "(4) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the budget director may request assistance from the legislative finance committee or its staff or from the legislative council or its staff, but assistance is at the discretion of the legislative finance committee or the legislative council, as applicable."

EXHIBIT 3
DATE 1-27-95
SB 167

21. Page 7, lines 11 and 12.
Following: "the" on line 11
Strike: the remainder of line 11 through "analyst" on line 12
Insert: "office of budget and program planning"

22. Page 7, line 13.
Strike: "jointly"

23. Page 7, line 14.
Strike: ", the legislative council, and the legislative finance committee
Insert: " and the legislature"

24. Page 7, line 17.
Strike: "committees"
Insert: "state"

25. Page 7, line 21.
Strike: "committees"
Insert: "office of budget and program planning"

26. Page 7, lines 23 and 24.
Strike: "recommended" on line 23 through "analyst" on line 24
Insert: "submitted to the office of budget and program planning"

27. Page 7, line 29.
Following: "mandate"
Insert: "and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order"

28. Page 7.
Following: line 29
Insert: "NEW SECTION. **Section 8. Legislative review and oversight.** (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of [sections 1 through 8]. The director of the office of budget and program planning, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with [sections 1 through 8].

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council and the legislative finance committee.

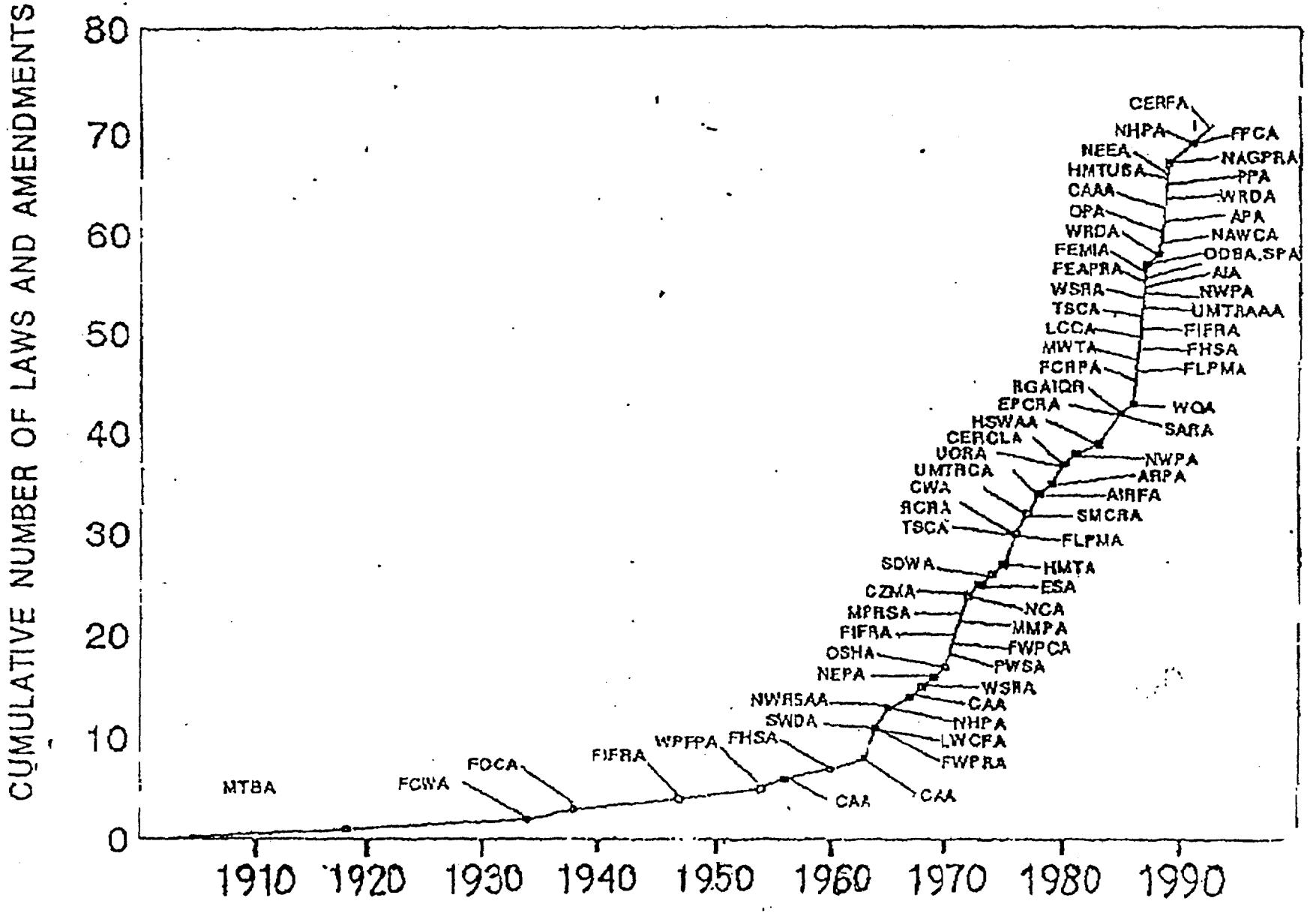
(4) The legislature may request the assistance of any

staff employed by the legislature."
Renumber: subsequent sections

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1-27-95
BILL NO. SB 167

FEDERAL ENVIRONMENTAL LEGISLATION

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1-27-95
BILL NO. SB-167



JAN-25-1995 09:41 BILLINGS PUBLIC WORKS

Amendment to Senate Bill 167
First Reading Copy

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 1-27-91
BILL NO. SB 167

Prepared by
Beth Baker, Department of Justice

1. Page 2.
Following: Line 29
Insert: "(h) nothing in [this act] may be construed to create a private cause of action."

Sierra Club

SB 167
SENATE JUDICIARY COMMITTEE
HEARING, JANUARY 27, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 1-27-95
BILL NO. SB 167

I. Federal law is the supreme law of the land

II. Power to regulate activities that are related to interstate commerce belongs exclusively to United States Congress

III. All of the targeted "unfunded mandate" statutes are expressly within Congress authority to enact under the Commerce Clause provision of the United States Constitution.

IV. Judicial means exist to challenge laws that Montana believes fall outside of the scope of Congress's legitimate authority

V. It is folly for our State Legislature to enact a law that attempts to challenge the authority of federal government mandates in Montana. Certain to lose in Court.

VI. Our nation's government is built upon a system of checks and balances between three branches of government.

VII. It also is built upon the precepts of federalism and representative government.

VIII. Montana receives more in federal subsidies and benefits that its residents pay in taxes and fees.

IX. What is at stake is the preservation of the Union. Montana is part of a patchwork quilt. We are represented in Congress by people that know Montana.

X. The ties that bind that Union have been stretched, but have not broken. We are not a loose knit confederation of states, each pursuing its own sovereign agenda. We tried that and it didn't work.

XI. We are one nation, under God with liberty and justice for all. I am priveleged to live in a country where I know that under the federal Constitution I am entititled to the same priveleges and immunities in Montana that I would be in Maine or Hawaii. And the same protections under federal laws. Where all public drinking water supplies are required to meet equally stringent standards, where clean states must meet the same solid and hazardous waste disposal standards as dirty states, thereby discouraging disposal of out-of-state wastes in a place where disposal is cheaper, where interstate highway standards are equally stringent, and yes where the activities of private individuals and companies must be balanced against the needs of the environment, the place we live and the place that all of our children and their children will inherit.

XII. Means exist to challenge unlawful or unconstitutional acts of Congress. Use those means. Do not be blinded by misguided arrogance that speciously suggests that Montana would be better off on its own without this bothersome interference from Washington D.C.

Montana State AFL-CIO

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

Donald R. Judge
Executive Secretary

406-442-1708

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 1-27-95
SB 167

Testimony of Don Judge, before the Senate Committee on the Judiciary, Friday, January 27, 1995, on Senate Bill 167

Mr. Chairman, members of the Committee, for the record, I am Helen Christensen of the Montana State AFL-CIO. I am here today to present the testimony of Don Judge, Executive Secretary of the Montana State AFL-CIO, urging your opposition to Senate Bill 167.

Senate Bill 167 is one of a series of bills before this legislature, many of which have already been heard before this committee, that purport to assert "states' rights" under the 10th amendment to the U.S. Constitution. These bills attempt to unilaterally change one of the most basic elements of our system of government, the relationship between the federal government and the states.

I would remind members of the Committee that the people of this country once fought a war over this very same issue -- the Civil War, popularly known as "the War Between the States." At that time in our history, Americans fought and died because some states refused to accept the **"unfunded mandate"** of the federal government that ended the system of slavery in our country.

Yes, this bill speaks to some very real frustrations felt by Montanans -- and I'm sure those same frustrations are felt by people in other states. The increasing complexity of our world demands an increasingly complex government. Clearly, not every federal regulation or "mandate" is defensible and they don't all have the same impact across different geographical regions. And, frankly, as this bill says, regulators don't always understand what life is like here in Montana.

But Montana can't fix the federal system all by herself. Not only don't we have the authority to overturn federal law, but it wouldn't make sense, even if we did. The issues before us as a nation are just as important to people in Vermont or Kansas as they are to people in Montana. And we can only deal with national issues on the national level.

I'd like to call your attention to two specific areas of this bill that are particularly troubling -- the first is the list of federal legislation targeted in this bill:

the Family and Medical Leave Act
the Commercial Motor Vehicle Safety Act
"the federal, state, local partnership for education improvement program"
"the federal school lunch program and school breakfast program"
"federal highway safety programs"
"federal social services and Medicaid requirements"

and others. If Senate Bill 167 is intended to be an indictment of those programs, then I suspect many Montanans would strongly protest. Montanans did not elect state legislators to enact **or** repeal federal law.

Second, I would urge this committee to very carefully consider Sections 6 and 7 of this bill. In each of these sections, SB 167 directs the state government to "request information" and recommend procedures for contracting out the crafting of public policy in the areas of federalism and states' rights.

Section 6 specifically directs the Legislative Council and the Legislative Fiscal Analyst to look to "organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on local and state governments."

Are we suggesting, then, that we contract out the making of public policy -- that is give taxpayer dollars to the Heritage Foundation or the Cato Institute, or Montana's own libertarian "think tank" the Political Economy Research Center, to decide for us our relationship to our own government? That sounds like state funding of political activity, and it is wrong!

The proper place to fix the federal system is at the federal level. Will solutions be harder to find there? Will we have to get more people to understand and agree with our point of view? Very probably. But will those solutions be more likely to work. **Absolutely.** We Montanans have never turned our backs on a job just because it was hard. That's when we roll up our sleeves and come up with some of our greatest solutions. In fact, in just that spirit, it was Montanans who came up with one of those huge, complex federal programs we now call Social Security.

Shall we throw out the Social Security system because we're frustrated? How about the Small Business Administration, the National Highway System, the Conservation Reserve Program, Malmstrom Air Force Base, Libby Dam...the list goes on and on. Unfunded mandates? Montana as a state takes in **more** in federal dollars than we pay out to the federal system in taxes! Do we really think we can have it both ways?

Let me close by reciting some words that I'm sure have been said by all of us in this room hundreds of times. In fact, we've recited these words so often that we probably say them sometimes without even thinking. Today, it is more important than ever that we don't just **say** these words, but that we **hear** them, and then **act** on them:

I pledge allegiance to the flag **of the United States of America** and to **the Republic for which it stands, one nation,** under God, **indivisible** with liberty and justice for **all.**

I still believe that we are **one nation, indivisible.**

Please vote no on Senate Bill 167. Thank You.

Respectfully submitted by Don Judge, Executive Secretary, Montana State AFL-CIO.

Northern Plains Resource Council

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 1-27-95
BILL NO. SB167

Testimony on SB167
Senate Judiciary Committee
January 27, 1995

Mr. Chairman and members of the committee. My name is Ted Lange and I'm speaking on behalf of the Northern Plains Resource Council. NPRC is opposed to SB167 because it gives the Legislature and the Governor the power to ignore basic natural resource protections without providing any assurance that the state of Montana will provide the resources to guarantee the protections provided under federal law.

NPRC has always strongly supported states' rights and has always been a strong advocate of local control. Last session we supported a bill that would have given Montana citizens the right to hold a referendum on whether to allow megalandfills or hazardous waste incinerators in their communities. Another example with specific relevance to SB167, is NPRC's position statement concerning the reauthorization of the Federal Clean Water Act. A cross-section of NPRC membership, representing both agricultural and non-ag interests agreed on the position that, "while ***standards*** for water quality should be set by the ***EPA***, the process of delineating watershed areas, identifying polluters, drawing up watershed plans and enforcing the program must happen at the ***local level.***"

NPRC believes, however, that HB167 goes too far, because it would give the legislature and the governor the authority to throw out or entirely ignore federal standards protecting our air, land and water. Federal standards are often minimum standards. In Montana, where the high quality of our environment is one of our greatest assets, we should be alarmed at any instance in which our environment becomes degraded to these minimum standards.

Also, federal standards are generally based on extensive research and a lengthy legislative process. We do not believe that the Montana Legislature, in 90 hectic days, could adequately review the technical information and potentially 1000s of pages of testimony and debate that lead to the creation of major public policies like the Clean Water Act.

NPRC believes that rights come with responsibilities. SB167 asserts sweeping rights for the state of Montana. But in our experience, the state has not demonstrated responsibility when it comes to implementing laws to protect our air, land and water. Recent audits of the Water Quality Division and the Hard Rock Bureau revealed serious disarray within these agencies and inconsistent enforcement of the laws they are entrusted to administer.

The EQC Hazardous Waste Management Working Group, which NPRC participated in over the last interim, learned that the Air Quality and the Solid and Hazardous Waste Divisions have serious staffing problems. Low payscales make it very difficult for these agencies to attract or retain qualified staff. Vacancies remain unfilled for months and high staff turnover rates create constant disruption. In recent legislative sessions, and so far in this one, we have seen little inclination on the part of the legislature to provide the funding to address this situation.

With rights come responsibilities and *costs*. You don't get something for nothing. We believe that many of these costs are unavoidable, whether they derive from federal law or Montana's constitutional mandate that we maintain and improve our environment. If the state is going to take everything into its own hands, it should be prepared to provide its agencies with the resources necessary to get the job done.

Given the current condition of state agencies, we are usually glad to have the federal government as a backup, guarding minimum standards. For instance, the people of Billings have known for a long time that their air was in bad shape. But it was the federal EPA, not the state, that finally called for some action over a year ago when it became apparent that minimum sulphur dioxide standards were being violated.

There are two final comments I'd like to make. First, NPRC believes it would be inappropriate to spend taxpayer dollars on studies of federalism when the legislature appears unwilling to adequately fund the agencies responsible for protecting our air, land and water.

We are also concerned that the Governor would be given the power to ignore federal laws if they do not conform to Montana customs and culture, when this criteria is not defined or even mentioned anywhere else in the bill.

We urge you to vote NO on SB167. Thank you.

218 - 1

Stanley R. Clothier
1885 Highway 35
Kalispell, MT 59901

State President,
Montana Landlords Association, Inc.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 1-27-95
BILL NO. SB 218

DATE: Friday, January 27, 1995

TO: Senate Judiciary Committe

RE: Senate Bill 218

To All Whom It May Concern:

Please accept the following written testimony in support of Senate Bill 218.

I am the current president of the Montana Landlords Association and operate Spruce Park Mobile Village in Kalispell. MLA now has in excess of 750 memberships including 76 mobile home parks. The majority of these memberships are couples and families with "Ma & Pa" operations. In other words, these 1500 people generally own only 1 to 5 rental units or mobile home courts with 30 or fewer spaces. These couples are working hard and have worked hard over the years to build a small business that they can depend on. They are paying mortgages and taxes that would stagger many lesser individuals.

In 1993, the legislature passed the measure which became 70-24-436 of the Montana Residential Landlord Tenant Act, requiring the owner or operator of a mobile home court to comply with a specific list of reasons for eviction of a tenant. We are not requesting, nor do we expect the repeal of 70-24-436 even if we would like it to happen.

The trainer of the Montana Justice Court, City Court and Municipal Court judges in the area of the MRLTA has been instructing the judges to interpret the law in a manner that requires a 90 day notice prior to the eviction procedure in every case including late rent. (Please see the highlighted section of the accompanying pages 136 & 137 from Klaus Sitte's book For Rent published in 1994.) The practical effect of this teaching of 70-24-436 has been that one local mobile home park (Half Moon Trailer Park in Columbia Falls) has had to live with tenants who were breaking into storage units for this 90 day notice period. There are other examples available.

Although 70-24-346 specifically refers to the procedures in 70-24-422, the time periods given in 70-24-422 are completely ignored in the instruction of our judges. It is our hope that this legislature will allow us to operate our courts in a manner that protects the

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other tenants. The neighbors in Half Moon also had to live for an additional 90 days with the thieves they had reported to the sheriff and testified against in criminal court because of the interpretation of this law.

Please help us solve the problem.

Thank you for your patience and consideration.

Sincerely,

Stanley R. Clothier, President
Montana Landlords Assoc.

EXHIBIT 9
DATE 1-27-95
SB 218

subsection (2)(b), the landlord shall give each prospective mobile home owner and tenant of the mobile home owner written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) (a) A landlord may terminate the rental agreement of a mobile home owner or a tenant of a mobile home owner if the landlord, by the termination:

(i) does not violate a provision of this section or any other state statute; and

(ii) has a legitimate business reason.

(b) A landlord shall give the mobile home owner or the tenant of a mobile home owner a minimum of 90 days' written notice of termination.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(b), only one notice per violation per month may be included in the calculation.

History: En. Sec. 2, Ch. 470, L. 1993.

Compiler's Comments

Effective Date: Section 5, Ch. 470, L. 1993, provided: "[This act] is effective 30 days after passage and approval." Approved April 21, 1993, effective May 21, 1993.

This is an entirely new section passed by the 1993 Montana Legislature. It establishes specific reasons for the termination of a rental agreement where only a trailer park lot is being rented. If the individual is renting the mobile home itself from another person who owns the mobile home, this section does not apply.

The Montana Legislature recognizes that moving a mobile home from a mobile home park lot is expensive and time consuming.[92] In many Montana communities, where there is a shortage of trailer park space, such a move is often impossible. Acknowledging the difference between moving personal belongings and moving an entire house, this section establishes certain specific requirements before a termination of a lot rental agreement may occur.

The ten described reasons are intended to provide a framework in which responsible trailer park lot tenants and trailer park owners can carry out their relationship. For example, consistent with the entire MRLTA, there is no protection for a tenant who fails to pay rent. Chronic rule violators, late rent payers and/or those posing danger to others will have their rental agreements lawfully terminated. Yes, termination rules will need to be properly followed.

Some parts of Subsection (1) deserve special mention. Subsection (1)(b) refers to the written notice required by Section 70-24-422, which, in the case of a mobile home, refers to the 15 day notice requirement for failure to pay rent. However, the 15 day notice requirement must be read with Subsection (3) of Section 70-24-436. Subsection (3) is crystal clear: a mobile

[92] The Legislature made that distinction clear when Section 70-24-422 (2)(b) was added to require 15 day notice for failure to pay lot rent versus 3 day notice for other dwelling units.

© Klaus D. Sitte

home park owner must provide at least a 90 day notice of termination to a mobile home owner. The notice requirement of these two sections (70-24-422 and 70-24-436) must be explicitly followed in order for the notice to remain valid.

TIP

A valid notice to a mobile home park owner who has failed to pay rent would read as follows:

> Dear Tenant:
>
> You have failed to pay your rent due on the 1st of the month. Please pay your rent within the next 15 days. If you fail to pay rent within that time, our rental agreement will be terminated. You will then have 90 days to move your trailer from this trailer park.
>
> /s/ Landlord

The landlord may also add that the tenant must still pay rent for the intervening period until the end of the 90 days or that payment of the rent after the 15 day period will not affect this notice. Even a warning that failure to pay rent will cause court action may be added. As long as the basic provisions are included -- the **pay up or get out** concept -- then the notice will be valid. If the tenant pays within the period, this particular notice, in and of itself, will not be grounds for the termination of the rental agreement.

If a tenant has received three such notices in a 12 month period, the landlord may terminate the rental agreement, regardless of whether the tenant paid the rent after receiving previous notices. The chronic late payer reason then becomes the cause for termination. See Subsection (1)(b).

Subsections (1)(c) through (1)(f) refer generally to violations of mobile home rules and the tenant's responsibility for maintaining the premises. These subsections do not specify how notice for violations are to be given. Some situations may require quick resolution, while others may not be as serious. Compliance with the rule, for example, may be more important than termination with the rental agreement. Three quick notices to build a record for eviction may not be as important as curing the problem.

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218-2
Judy Gardner

THE GROWTH OF MOBILE HOME OWNERSHIP IN MONTANA AND ATTENDANT PROBLEMS

Prepared by Montana People's Action

SENATE JUDICIARY COMMITTEE
EXHIBIT NO 10
DATE 1-27-95
SB NO SB 218

INTRODUCTION

A decline in the real purchasing power of Montana families, in conjunction with a significant increase in the cost of housing in the Treasure State - brought on in no small part by a new wave of immigrants looking to live in the "last best place" - has caused a dramatic increase in the number of Montanans living in mobile homes over the last decade.

In fact, according to the 1990 U.S. Census, *the increase in the number of mobile homes in Montana over the last ten years is equal to 79% of the overall increase in the total number of occupied housing units in the state.*

Table

Increase in Number of Total Occupied Housing Units, Mobile Homes, Montana

	1980	1990	Increase
Occupied Housing Units	283,742	306,153	22,411
Mobile Homes, Trailers	40,787	58,556	17,769

Montana People's Action (MPA) currently estimates that there are over 160,000 Montanans living in mobile homes and that an estimated 110,000 of them live in the state's 1,200 licensed mobile home courts or trailer parks.

It is MPA's contention that Montana families living in mobile home courts are a large, at-risk population that deserves increased statutory protection, for the reasons outlined below. The vast majority of these Montanans own their own homes.

PROBLEMS

Many courts have deficient water and sewer systems. Over the last two decades, very few new mobile home courts (MHC's) have been built. Many courts operate with their own aging water and sewer systems and are not hooked up to municipal or other water and sewer systems. State law requires MHC's that operate their own systems to provide a licensed operator yet very few courts employ them, let alone have them on-site. Court water systems are supposed to be tested on a monthly basis but this requirement is not strictly enforced by local health departments and

inspecting MHC's is not a priority for local health departments. Practically every community in the state has a "trailer court" water and sewer horror story to tell.

Courts are full, and there is no competition in the mobile home court "marketplace". The dramatic increase in the number of Montanans living in courts, the limited construction of new courts, and rapidly rising land values which prohibit many families - particularly in urban and high growth communities - from buying a patch of ground to the place thier home on, mean that mobile home owners have limited choices when it comes to finding a place for their home. Furthermore, despite their name, mobile homes are immobile, costly to move, and are often damaged in the process. Under these circumstances, court owners can raise rents at will, provide little or no maintenance, and actually reduce the services they provide knowing that court residents are unlikely to move their homes because there are so few available spaces and moving is costly and time-consuming.

Many court owners make it difficult for residents to sell their homes. A significant part of the value of a mobile home is its site. Under current Montana law, court owners can block a mobile home owner's sale of their property by not approving the purchaser as a new tenant. This often means that mobile home owners who wish to sell their home and move are forced to sell their home to the court owner at a price which is well below its value. Owners can then re-sell the home at its true value or turn the home into rental property which will command a monthly rent which is far greater than the lot rent paid by home owners in the court.

Many home owners face discrimination based on the age of their homes. As courts have become full, and the value of a court space has increased, many court owners have taken steps to remove older homes from their courts. When it comes time to sell their homes, many mobile home owners who have invested thousands of dollars in improving their homes are told that the only way they can sell their home is if it is removed from the court. This makes a mobile home almost impossible to sell given that most prospective buyers want to buy and move in and not have to buy, locate a space, and move their new home.

Some courts require "entrance fees" as a condition of locating your home in them. Others charge fees for the right to sell your home and keep it in place. In both situations, court owners are taking advantage of tight markets to extort additional money out of mobile home owners.

Some court owners have financial relationships (often called "tie-ins") with mobile home dealers. This means that owners have an incentive to evict owners of older homes (or tenants who may be assertive about asking for maintenance) to find spaces for newer ones.

SUMMARY

The problems outlined above are just some of the problems which face tens of thousands of Montana home owners living in mobile home courts. These Montanans are mill workers, secretaries, small business owners, retirees, teachers, laborers and professionals. The problems they face - which MPA can document thoroughly with personal testimony - are due to the distinctiveness of their homes. They own homes that are difficult to move and there are very few mobile home court spaces available in Montana communities.

As mobile home ownership has increased across the country, many states - particularly western states where mobile home ownership is high - have increasingly found reasons to regulate the mobile home court industry. Twenty-nine states (including Montana) now require "Good Cause" eviction, twenty-two states (including Montana) require that court rules be fair and reasonable, twenty-eight states (not including Montana) allow home owners to sell their homes within their courts, and twenty-three states (not including Montana) prohibit court owners from charging extra fees.

Undoubtedly, the majority of mobile home court owners are responsible individuals doing their best to provide a decent product for a fair price. But there are also undoubtedly many court owners who take advantage of the vulnerability of today's mobile home court resident in Montana.

It is MPA's contention that the good court owners have nothing to fear from increased scrutiny on the part of the state.

At a minimum, the state should pass laws which protect mobile home owners' right to sell their property without undue interference, and provide this at-risk population with educational resources so that they know the laws which affect their tenancy. There are approximately 8,000 nursing home residents in Montana and we have established the office of the Nursing Home Ombudsman to meet their informational needs. There are over 110,000 Montanans living in mobile home courts. Why shouldn't they have an ombudsman as well?

EXHIBIT 10
DATE 1-27-95
SB 218

STATE OF MONTANA
MOBILE HOMES AS PERCENTAGE OF HOUSING UNITS
BY COUNTY FROM 1990 CENSUS

	1	2	3	4
	TOTAL #	NUMBER OF	MOBILE HOMES	EST. # PERSONS
COUNTY	HOUSING UNITS	MOBILE HOMES	AS % OF UNITS	LIVING IN MH'S
Beaverhead	4,128	970	23%	2,668
Big Horn	4,304	847	20%	2,329
Blaine	2,930	398	14%	1,095
Broadwater	1,593	409	26%	1,125
Carbon	4,828	748	15%	2,057
Carter	816	215	26%	591
Cascade	33,063	3,786	11%	10,412
Chouteau	2,668	452	17%	1,243
Custer	5,405	723	13%	1,988
Daniels	1,220	132	11%	363
Dawson	4,487	600	13%	1,650
Deer Lodge	4,830	414	9%	1,139
Fallon	1,525	303	20%	833
Fergus	5,732	1,048	18%	2,882
Flathead	26,979	4,764	18%	13,101
Gallatin	21,350	3,350	16%	9,213
Garfield	924	235	25%	646
Glacier	4,797	880	18%	2,420
Golden Valley	432	88	20%	242
Granite	1,924	432	22%	1,188
Hill	7,345	1,136	15%	3,124
Jefferson	3,302	795	24%	2,186
Judith Basin	1,346	259	19%	712
Lake	10,972	2,007	18%	5,519
Lewis and Clark	21,412	3,606	17%	9,917
Liberty	1,007	205	20%	564
Lincoln	8,002	2,089	26%	5,745
Madison	3,902	770	20%	2,118
McCone	1,161	231	20%	635
Meagher	1,259	327	26%	899
Mineral	1,635	537	33%	1,477
Missoula	33,466	5,311	16%	14,605
Mussellshell	2,183	485	22%	1,334
Park	6,926	1,190	17%	3,273
Petroleum	293	80	27%	220
Phillips	2,765	616	22%	1,694
Pondera	2,618	387	15%	1,064
Powder River	1,096	353	32%	971
Powell	2,835	548	19%	1,507
Prairie	749	121	16%	333
Ravalli	11,099	2,096	19%	5,764

Richland	4,825	810	17%	2,228
Roosevelt	4,265	662	16%	1,821
Rosebud	4,251	1,343	32%	3,693
Sanders	4,335	1,065	25%	2,929
Sheridan	2,417	359	15%	987
Silver Bow	15,474	1,430	9%	3,933
Stillwater	3,291	704	21%	1,936
Sweet Grass	1,639	225	14%	619
Teton	2,725	421	15%	1,158
Toole	2,354	370	16%	1,018
Treasure	448	105	23%	289
Valley	5,304	510	10%	1,403
Wheatland	1,129	211	19%	580
Wibaux	563	123	22%	338
Yellowstone	48,781	6,255	13%	17,201
TOTALS	361,109	58,536	16%	160,974

1) Total number of housing units, occupied and unoccupied, from U.S. Census.
2) Total number of "Mobile home, trailer, other" from U.S. Census.
3) Column 2 as a percentage of column 1.
4) Column 2 times 2.75 persons per household.

Taking Aim at Trailer Park Tyranny

Mobile home parks are a largely unregulated industry in many states. They may not stay that way much longer.

BY CHARLES MAHTESIAN

There are no trailer parks in Ellen Harley's suburban Philadelphia district. Nevertheless, she finds herself this spring as the chief sponsor of a bill to do something her legislature has been reluctant to do in the past—place tougher state restrictions on mobile home dealers and park owners.

Representative Harley's interest in the subject reflects in part her background as a city and regional planner. But even more, it reflects the arrival of mobile home regulation as an issue that legislatures all over the country are going to have to grapple with.

Up to now, few governments at any level have had much desire or reason to get involved with policing mobile home or trailer parks. Few localities want them, and those that have them usually prefer that they stay hidden away in some out-of-sight cul-de-sac. But it is no longer possible to keep them out of sight politically. The problems created by a little-watched industry are forcing their way to public attention as Americans turn to "manufactured housing" in their search for affordable places to live.

At the extremes, these problems can border on the Orwellian. There are trailer parks where residents are not allowed to have food delivered after a certain hour, or have a visitor of the opposite sex. There are others where the terms of the lease are altered according to the applicant's marital status, religious affiliation or sexual orientation. There are some in which, during the Christmas holidays, residents have to pay a fee for each guest who stops by to pay a call.

All rules of that sort are clear violations of federal housing law. But they are documented cases that have turned up in various parts of the country where state law regulating the parks is weak or nonexistent. "Some of the parks turn into absolute dictatorial arrangements," says John Jensen, past president of the National Foundation of Manufactured Home Owners. "The landlords think nothing of peeking in your windows."

No one is claiming that trailer-park fascism is the typical situation. But the horror stories have multiplied because the parks themselves grew so fast in the 1980s. Overall, production of mobile homes is down in the current recession, but in the 1980s, they were the fastest growing-type of dwelling. In the nation as a whole, about 1 in 16 people now live in manufactured homes. In some states, such as South Carolina and Wyoming, the number is closer to 1 in 6. In four Nevada counties, mobile homes make up more than half of the housing units. Even in Pennsylvania, not known as a warm-weather sanctuary, there are now 250,000 mobile homes.

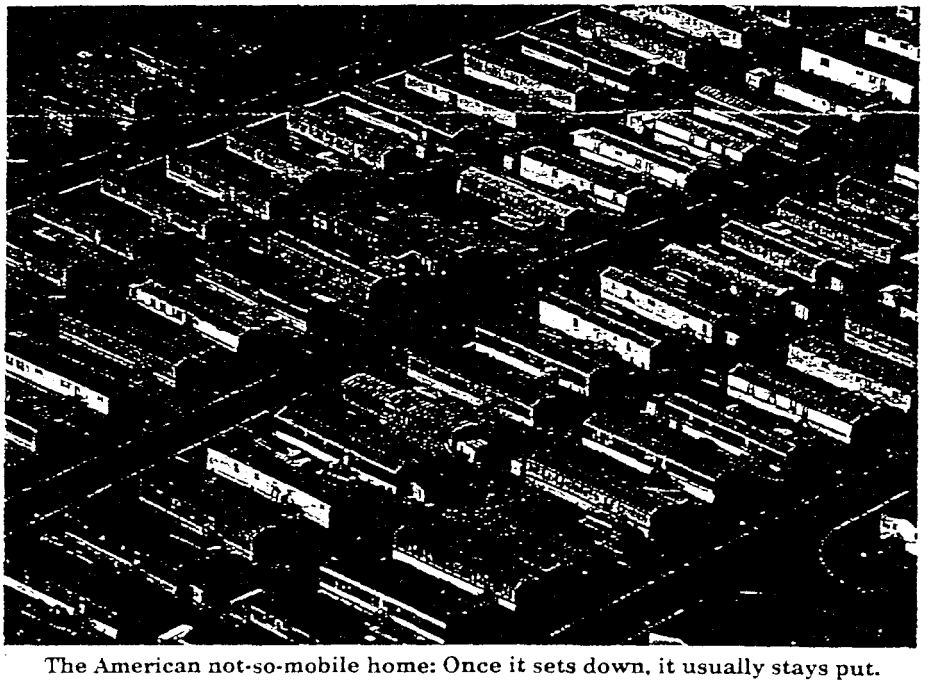
THEY ARE A SYMBOL OF HARD economic times, hard enough to lead lower-income and middle-class families and millions of retired people to seek refuge from unmanageable housing costs. A mobile home depreciates in value every year, but at about $20,000, a new model suitable for a couple or small family sells for a fraction of the price of conventional housing, even in the nation's cheapest housing markets.

Actually, the term "mobile home" or "trailer" is hardly used anymore—at least within industry circles—because it tends to conjure up visions of run-down, dilapidated vehicles crowded together in a rural shantytown.

Instead, the manufactured housing industry prefers to call its traditional products "single-sections," as opposed to the larger and more aesthetically pleasing "multi-sections." The multi-sections consist of several discrete manufactured segments, delivered on a flatbed and assembled on site. The single-section mobile home, in contrast, is towed to a site without a permanent foundation. It rests on wheels and a chassis.

Nowadays, only units made before 1976—the year the U.S. Department of Housing and Urban Development established a national code for manufactured housing—are called mobile homes. Everything after that point is referred to as manufactured housing.

But the semantics are of less concern than the practices of the operators, particularly in states such as Pennsylvania, where the law gives the individual home owner very little protection. There, the state attorney general's office accidentally uncovered an undercurrent of outrage while laying the groundwork for an antitrust lawsuit against a mobile home dealer in Lancaster County. In the course of the investigation, enough complaints surfaced to justify creation of a special task force on manufactured hous-



The American not-so-mobile home: Once it sets down, it usually stays put.

ing. "It was becoming increasingly obvious that we needed to take a hard look at the laws," says Dan Clearfield, director of the public protection division.

What was happening in Pennsylvania was this: Mobile home park owners were steering purchasers to a specific dealer in exchange for a share of the dealer's profits on the sale. It amounted to coercion, because home buyers typically must secure a space in a park before purchasing, and with spaces limited in a given area, they are not in a position to reject the park owner's instructions on where to buy the home, even if they must pay a higher price as a result. In most states, including Pennsylvania, tie-ins between dealer and park owner are legal. In fact, dealers themselves are the park owners in many instances.

It is in these situations, with spaces at a premium, that mobile home owners are sometimes forced to swallow arbitrary lifestyle restrictions or capricious increases in the rent for their space. "The core issue with mobile home parks is that a mobile home is not really mobile," says Jon Sheldon of the National Consumer Law Center. "Once you're there, you're stuck. It's too expensive to move if your rent is increased."

Some 18 states now require written terms in the leasing of trailer park space, but even this represents little protection, since only four of those states require a lease term of a year or more. With the leases shorter than that in most places, rent can be raised at virtually any time, and there is little redress available for the tenant. Moving away is usually an unrealistic option—it can cost $6,000 to move a home that is barely worth that much on the market. Furthermore, some landlords impose sales conditions that make it nearly impossible to unload a used home, forcing the home owner to sell it back to the landlord himself at a discount price.

Dan Gilligan, vice president of the Manufactured Housing Institute, says many of these complaints are unjustified, or the result of isolated instances. "Every industry has its oddballs," says Gilligan. "We're not interested, as some of the more militant groups would portray us, in running prison camps. We're interested in having happy customers."

THESE DAYS, HOWEVER, STATE and local governments are finding themselves under growing pressure to force the industry to take customers' rights seriously. In the past, the unorganized and economically distressed home owners have had little pull in state capitols, especially compared with the well-financed dealers and park owners. But that is changing as a slightly higher-scale group of people with some political sophistication moves into manufactured housing. "More and more middle-class people are buying these homes," says Harley, the Pennsylvania legislator. "And when it becomes a middle-class issue, it becomes a political issue."

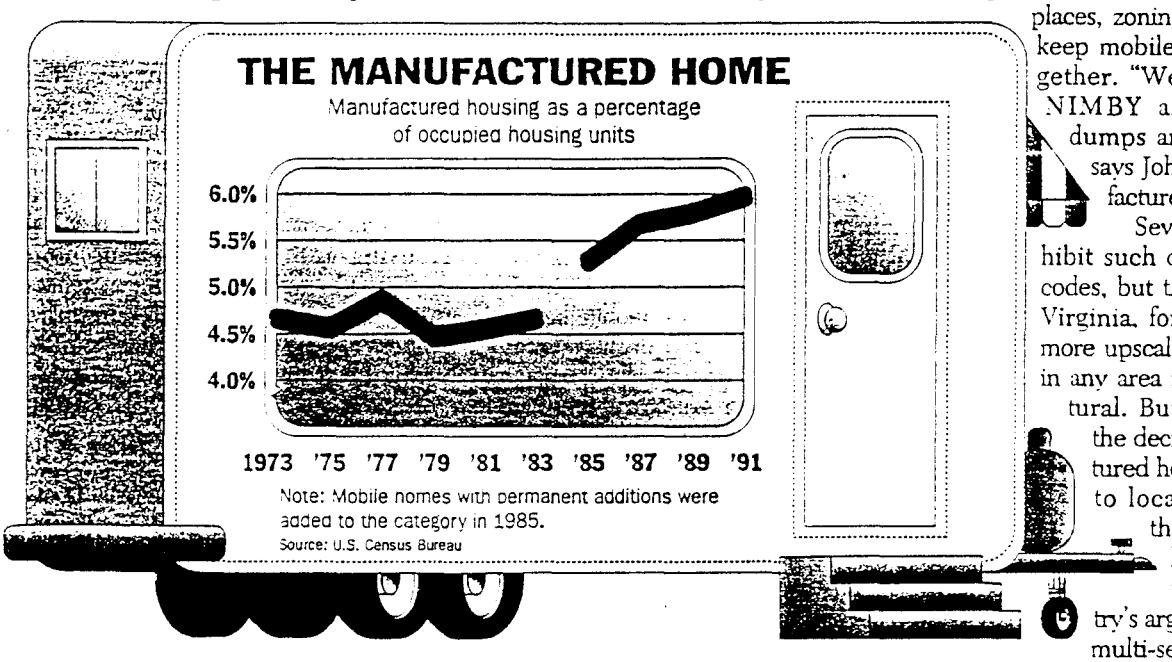
The two states with the highest number of mobile homes, Florida and California, both have well-organized ho e-owner organizations that have lob for written lease terms and stricter lan lord maintenance obligations. York's mobile home owners gave up b bying the legislature and instead too their fight to individual counties, where they have won passage of laws ban arbitrary eviction.

On some important issues, there reasons for the home owners and park owners to work together. In m places, zoning laws are design keep mobile home parks out a gether. "We're classified by NIMBY along with landf dumps and cement factor says John Jensen of the M factured Home Owners.

Seventeen states now hibit such discriminatory zo codes, but those laws vary w Virginia, for example, allow more upscale, multi-section ho in any area zoned rural or agricul tural. But outside these a the decision to allow man tured housing of any sort to local jurisdictions. they, as a rule, will o listen to the manu tured housing ind try's argument that the ne multi-section homes are a tecturally and aesthetically compat with conventional developments. T knock is that manufactured housing- matter how attractive—drives d property values.

When the homes are of the old-fa ioned single-section variety, the st is often impossible to overcome. "T are a tremendous amount of local emments around the country savin single sections, period,'" says A Scholz, director of site development for the Manufactured Housing Institute. "The problem that they tend to ove o is that there are a lot of people who want single-section homes."

Home owners and park owners can thus find common ground whe comes to lobbying for permissio plant themselves in a community. O they are planted, though, their inte collide. Harley insists it need not be way. "The good community own have no problems with these regula tions," she says. "The baddies are only ones who have problems them."


THE MANUFACTURED HOME
Manufactured housing as a percentage of occupied housing units
6.0%
5.5%
5.0%
4.5%
4.0%
1973 '75 '77 '79 '81 '83 '85 '87 '89 '91
Note: Mobile homes with permanent additions were added to the category in 1985.
Source: U.S. Census Bureau

212_3
Fleschman

County of Yellowstone

CITY-COUNTY HEALTH DEPARTMENT

POST OFFICE BOX 35033
BILLINGS, MONTANA
59107

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 1-27-93
BILL NO. SB 418

January 28, 1993

Dennis McCord
118 South 30th
Billings, MT 59101

Dear Mr. McCord,

I would like to thank you for inviting the Yellowstone City-County Health Department to the Blaine's Trailer Court Tenants Association meeting. However, no one from our staff will be able to attend the meeting scheduled on January 29, 1993 at 7:00 p.m.

I will try to address your concerns and answer the questions about inspections and procedures in handling complaints.

Trailer courts are regulated under Title 50, Chapter 52, MCA (50-52-101 through 50-52-303). Inspections are conducted under Title 16, Chapter 10 Subchapter 7, ARM (16.10.701 through 16.10.717).

The Yellowstone City-County Health Department conducts compliance inspections of each trailer court in Yellowstone County a minimum of once per year. Additional inspections may be conducted in response to complaints. These types of inspections are usually made due to garbage, sewage or nuisance complaints.

If violations are found during an inspection the owner or manager is given written notice of the violation(s) and given a specified time period to abate the noted violation(s). If non-compliance of any violation occurs and is not corrected, the Yellowstone City-County Health Department requests that the Yellowstone County Attorney's office proceed with any enforcement action, which could include fines and, in extreme cases, an injunction to close the trailer court. In all cases we try to work with owners and complainants to achieve quick and satisfactory abatement of the problem.

It must be pointed out that the Yellowstone City-County Health Department does not have statutory authority for enforcing violations that are covered under the Landlord-Tenant Act.

Situations that are caused directly or indirectly by landlord such as no heat, electricity or water come under the Landlord-Tenant Act. It is recommended, under these circumstances, that the tenant seek legal counsel or call Montana Legal Services at 248-7113 or file under Small Claims Court.

It must also be mentioned that if a landlord or owner refuses to abate certain violations or nuisances, the Yellowstone City-County Health Department's only recourse is to have the house or trailer closed to occupancy. This would require the tenant or renter to move within 30 days.

Complaints are confidential and our office does not give names of complainants, however, landlords have been known to give written eviction notices when notified about complaints. Our office has not control over these types of actions.

If our office cannot help in a particular situation we will always try to direct you to the proper agency where help may be obtained.

If you have any further questions, please call 256-2752

Sincerely,

Ted Kylander

Ted Kylander, R.S.

TK/ajt

cc: Vicki Coonfare, 206 Jim
Les Protopapas, 618 Richard

enclosures

MONTANA LEGAL SERVICES ASSOCIATION
304 North Higgins Avenue
Missoula, MT 59802
(406)543-8343
1-800-666-6899
FAX (406)543-8314

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 1-27-95
BILL NO. SB 218

Klaus D. Sitte
Managing Attorney

Hilary Bush
Attorney

Les Ochs
Attorney

Support Staff
Susan Brandon
Laura Danforth
Jon Howard

Paralegal
Mary Ann Zeimet

MEMO

DATE: January 25, 1995

TO: Senate Judiciary Committee

FROM: Klaus D. Sitte

RE: Senate Bill 218

Please accept the following written testimony **in opposition to** Senate Bill 218.

By way of introduction, I am a co-author of the 1977 Montana Residential Landlord and Tenant Act (MRLTA) and author of *FOR RENT: The Complete Montana Landlord and Tenant Guide*. I have worked in the landlord/tenant area of the law for over 20 years. I regularly train Montana Justice Court, City Court and Municipal Court judges in landlord/tenant law. During 1994, over 300 **landlords** attended seminars I conducted in this specialty area. Both landlords and tenants alike have sought my counsel on the MRLTA.

The proposed legislation will effectively reverse legislation passed just two years ago. Specifically, the elimination of subsection (3) of §70-24-436 completely alters the essential meaning of the entire section, so as to remove the *good cause* requirement for eviction from mobile home parks. Instead, the bill seeks to substitute new subsections (2)(j) (i) and (ii), which allows 90 day termination for **no cause.**

In my travels and training throughout Montana, I have regularly asked landlords and judges for any adverse effects of the *good cause* requirement for mobile home evictions. I have received **no** response that §70-24-436, as it exists, unreasonably or unnecessarily penalizes **good** landlords. On the contrary, several justice court judges have reported to me that the present section has prevented unjust, unscrupulous and down-right unfair terminations.

Remember, 70-24-436 protects only **good** tenants. Tenants who fail to pay rent, tenants who are chronically late with payments, and tenants who have no respect for park rules have **no** protection through *good cause*. To remove the present language would allow landlords who simply do not like tenants

to evict them upon 90 days notice, as was the case in the past.

How many of us, as home owners, would feel safe or comfortable if our mortgage lender, for example, could ask us to leave our homes without cause? Is it reasonable for **mobile home owners** to be subjected to this uncertain jeopardy? Tenants have long felt unable to speak out on mobile home park conditions for fear of eviction. Home owners should not feel so threatened.

Next, the bill seeks to inject law enforcement officials into what is, and always has been, a **civil** area of the law. By adding the proposed subsection (5) to §70-24-427, the MRLTA practically becomes a civil procedure code, not a landlord and tenant code. Nowhere else in the MRLTA is the **sheriff** mentioned or directed to take a particular action. It seems particularly egregious to allow a landlord this specific remedy against a **homeowner**, when the homeowner has no extraordinary remedy against the oppressive landlord. What special remedy does a tenant receive when essential services are improperly disrupted or stopped by a ruthless landlord?

The MRLTA should remain consistent: when, and if, the landlord wins a case and receives judgment, the landlord may follow regular civil procedure rules to enforce judgements, just like any judgment holder in Montana. As long ago as 1871, the Montana Supreme Court has said that landlords need to follow civil procedure rules. Landlords win justice court cases at least 65% of the time, according to my discussions with justice court judges. Good landlords need no special protections from the courts; decent landlords rarely need to resort to court. Those who do find adequate remedies in the MRLTA and the law. We should not create special remedies to serve a particular class of citizens, as opposed to another class of citizens.

Passage of the proposed amendments would substantially undermine the thoughtful and thorough work of the 1993 Legislature and effectively repeal significant sections of the code. When Gov. Racicot signed the present law during the 1993 Legislature, it became effective earlier than most bills because of the vital importance to mobile home owners. The importance of *good cause* has not diminished since then.

There are adequate remedies available to good landlords who act responsibly to good tenants. Reasonable landlords and reasonable tenants resolve disputes on a regular and daily basis. No one has the "upper hand." The balance presently afforded to landlords and tenants in the MRLTA needs to be preserved.

LEXLEYGRAM

Jan. 29, 1994

218-S
all
(2) pages

Because of new laws passed in the last legislative session, the costs of managing mobile home parks has gone up. (It now costs more to evict bad tenants.)

RENT MUST BE INCREASED $15.00 EFFECTIVE MARCH 1, 1994.

The utility bill for the park is up again. Remember rent paid late.... after the 5th....is $25 higher.

NO NEW DOGS!!! All pets should be registered at the office with picture, neutered, collared and tagged. If I find a loose pet, it will be taken to the Humane Society. NO BARKING DOGS!

Please keep your yards clean - no outside storage. The park is looking better, but we still have some bad looking homes that need paint and repairs. The grass is thawing, so you may have to stop parking on it so it does not get damaged or rutted.

For me to evict, I need your complaint signed. Just Cause Eviction takes away my rights to evict and keep you out of it. Now to evict drug dealers, child molesters, and criminal types, I have to prove they did it here. Thank You "Just Cause Eviction". Good people are the victims by not speaking against the Just Cause Eviction bill. I need your help and cooperation.

Jerry Swenson
388-6095

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 1-27-93
SB 21P

Lexley Views 1993 March 24th

Its time to clean up yards, no outside storage on the grass of any kind (no parking on the grass!!) (no dumping garbage on the ground!!) (there is no longer a brush pile!!) 70 State health code says no outside storage!!) (the dumpsters are just for kitchen rubage!!) no big household items like furniture, stoves, fridges, washer & dryers. no lumber or remodel wastes.

The change I hate to have to do is rent has to go up $15.- may 1st to pay for new well, increased garbage costs, & legal costs to get rid of bad renters has gone up dramatically! It looks like we'll be going back to cans to get rid of the dumpsters that are a mess.

No new dogs! Dog owners that don't pick up dog poops daily will be evicted! Dogs must not trespass on other's yards! If you get a new dog you will be evicted! All Cats & dogs must be neutered & tagged. All fences must be the good neighbor types, "look good on both sides!" If you wish to sell your mobile remember you don't own the lot.

Rent paid late after the 5th must include $25 more for late charges. Rent is due on the 1st late on the 6th!

Toys must also be picked up nightly. Lawn mowers need to be inside too. Nothing left on the lawn but mobiles & shade.

The park is looking a lot better but we still have a way to go. Thanks for your cooperation & help to make this a better place to live.

The newspapers printed a lot of lies & half ~~lies~~ truths. I did not disinfect the faucets enough when I took water samples. Never was the system bad & it was two samples not seven.

Sternlogen was not evicted because of the age of his mobile! Marvin was evicted (last) & then she filed a complaint (2nd). I go by the yard condition & the ledger! Do they pay on time?

[$ 200 mt. Power + Cable TV + telephone]

thanks,
Jerry

It is time for spring cleaning. No outside storage! Get a shed.
I'm looking for the worst yard in each street to evict.
I'm also looking for:
- new dogs!! loose pets!! barking!! all dogs + cats must be registered + neut
- junky yards (no outside storage on the lawn against the mobile or behin
- Bikes + toys must be stored when not in use!!
- late rent payers after the 5th (evictions on the 10th)
- no dumping garbage on the ground instead of in the dumpsters! I will pa
reward for the name or license plate # of persons dumping on the grou
people not from the park who use our dumpsters your name will
- no parking on the grass + no junk vehicles
- no hot ashes in the dumpster (must be cold + 2 days old)
- unskirted homes (must be skirted all 4 sides)
- unpainted wood (skirting, fences, porches, steps, + sheds) this spri
- any disturbing the peace + quiet of the park! no loud parties!
- Children must stay out of other peoples yards unless invited
no B-B gun shooting in the park
any damage to the playground area will result in your ev
I will not put up with children who mess with other peoples s
Let us all take pride in where we live and make this a bett
P.S. If you find any rocks kids might throw please put them in the dumpsters. We don't need broken windows!! Jerry Swenson 388-

Loxley Drive 1/18/91

I'm still having lots of people calling for places to live.
I will be starting to evict again in Feb. by looking for:
- new dogs!! loose pets!! barking!!
- junky yards (no outside storage on the lawn, against the mobiles, or be
- late rent payers after the 5th (evictions on the 10th)
- dumping garbage on the ground instead of in the dumpster!
(I will pay a reward for the name or license plate # of persons who dumps
- junk vehicles
- parking on the grass
- hot ashes in the dumpster (must be cold + 2 days old)
- unskirted homes (must be skirted all 4 sides)
- unpainted wood skirting, porches, + sheds this spring
- any disturbing the peace + quiet of the park!

I want you to be proud of where you live; then I can be proud.

P.S. The water tested good now! (as the 5th of Jan.) Jerry Swenson
388-6095

Best wishes in the new year.

218 4
Exhibit

MontPIRG

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 1-27-95
BILL NO. SB 218

Montana Public Interest Research Group
360 Corbin Hall • Missoula, MT • 59612 • (406) 243-2908

Testimony Against Senate Bill 218: January 27, 1995

The Montana Public Interest Research Group is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG has over 4000 members in Montana, with 2200 student members, and is funded with membership donations.

MontPIRG runs a tenant/landlord hotline, receiving more than 100 calls per month. Before the good cause evictions legislation was passed, we would get calls from mobile home owners asking if they "had any rights" because they felt they were being evicted unfairly and without reasonable notice. Last sessions' good cause eviction legislation provided landlords and tenants guidance regarding rules and procedure, creating a more equitable situation between them.

If Senate Bill 218 is passed, mobile home owners will be particularly vulnerable if there is no law protecting them from eviction without good cause. A mobile home can cost more than $2000 to move. In Montana, there are very few spaces at mobile home courts. Without good cause evictions, we create a situation in which the owner of the home may not be able to finance a move or find a place to put his or her home .

MontPIRG opposes Senate Bill 218 because it undermines good cause eviction legislation passed during the 1993 Montana Legislature. Good Cause Evictions passed with wide support from the citizens of Montana because only eviction with good cause is fair.

For these reasons, we urge you to oppose Senate Bill 218.

Kam Peste
2611 Upper River Rd. #26
Great Falls, Mt. 59405

218 - 7
etc.
no testimony

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 1-27-95
BILL NO. SB218

January 26, 1995

Dear Senators,

In reference to Senate Bill 218: I am outraged to hear what is going on. After joining a residents association, I was harassed and threatened by my landlord. If it were not for "Good Cause Eviction" law, she would have evicted me and others who were standing up for our rights. By law, she is responsible for snow removal and an on site manager. But she refuses to provide these service. If this bill were to pass, I and others would definitly be evicted.

I am a single mother with 4 children that are depending on me to get through nursing school & provide a living for them. I am scared to death to even think what would become of us if this bill passed. Where would we go? Because of an age restriction my mobile home is to old to move into the only courts that have any room left. My mobile home is in excellent condition it has a shingled roof & wood siding, but that doesn't seem to matter.

in a Mobile home, so you wouldn't know the 1st thing about the rules & regulations that go into one. some rules are good, but most are ridiculous, its like living in an Army barracks & should imagine - but if this is the only Place one can live we have no choice - This is our home & Castle -

If we looked at some of these so called rental homes & believe you me, they are abombinable & these landlords have people over a barrel because there is no other Place for them to go I'm sure there is not one landlord who cant put his hand on a couple of hundred dollars in a minute, if they needed something in a hurry but the Tenants cant & bet -

The landlords are making a hell of a profit on the misery & misfortune of other people - So Please help them & help the "M.P.A" "Montana Peoples Action" to fight the landlords & Kill the Bill 218 for humanitarian reasons also -

Ill be forever in your debt

Thanking you.

Sincerely.

Mrs. J. Mulliner

3805 - 7th St N.E. #62

Great Falls 59404

P.S. If I get thrown out of the Trailer court because of this letter & belonging to the MPA could I move into your yards or on the Capitol lawn? of course not. Please say NO to 218 vehemently There are more landlords than M.P.A members

over -

EXHIBIT 15
DATE 1-27-95
SB 218

2

me, that she was selling the place, & I had to have an open house for people to come & visit & see the home, & couldn't be there, so consequently & also had stuff taken, - you of this & decided that I had to move, (the house finally sold altho it took mths) & found this trailer & decided I would like my own castle so a very good friend loaned me the money to buy it - Tried to get the manager to cut some grass in, but to no avail & finally had to do it myself as when it rained it was a mud puddle & I felt like "Noah" in the "Ark" nothing but water all around & no where to run too & still haven't - I doubt whether any of you gentlemen have ever lived

Helena, Mont

Dear Sirs -

I am really angry to think that after all the $ work the M.T.A. have done to pass good Large legislation to help protect people like me who live in a mobile homes ~~courts~~ in a Trailer ~~courts~~ should come to nothing by the "Bill" 218 passed - & have lived in the ~~Trailer~~ Countryside Village for eighteen months & my rent has gone up from $105. to $177 for now, no doubt it will go up again another $10 or more now that the sewer & water rates have gone up in Great Falls. & lived in a rented house before moving here, paying $400 a month - which & my husband $600 coming in & also had to pay utilities as well - & every spring & sometimes fall I would have the landlady come & tell

DATE 1-27-94

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 167, SB 218

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Ted Clack	DCHS - info only	SB 65		
Daniel N McLean	Oakland Holding Company	SB 218	✓	
Mary McCue	Mobile Home Park Owners	SB 218	✓	
John Shontz	MT Assoc Realtors	SB218	X	
Ronda Carpenter	Mt Housing Providers MHA IPM WMLA	SB 218	X	
Michael J Pare	Mobile Home Park Tenant	SB218		✓
Pervis Jones	Tenant	SB 218		✓
Andy Gardner	Montana People's Action	SB 218		✓
Bruce Hietala	Mobile Home Park Resident MPA	SB 218		✓
Paul Grively	MPA	SB 218		✓
Alice E Jacks	MPA	SB 218		✓
Rick VanAken	MPA	SB 218		✓
Bob Christensen	MPA	SB 218		✓
Melissa Case	MPA	SB 218		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EIC

DATE 1/27/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 167 - SB218

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
W James Kembel	City of Billings	SB167	✓	
Deborah Smith	Sierra Club			✓
Ted Lange	NPRC	SB167		✓
Gordon Morris	MAGO	SB167	✓	
Helen Christensen	Mont State AFL-CIO	SB167		✓
Tom HARWOOD	SELF	SB167	✓	
Christine Kaufmann	Montana Human Rights Network	SB 167		✓
Brad Martin	MT Democratic Party	SB167		✓
Alec Hansen	MLCT	SB 167	✓	
Ed Caplis	MSCIA	SB167		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Jan 27 1995

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 167 SB 218

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Nancy Weinzettel	Montana People's Action	218		—
Lela DeCock	MPA	218		✓
Alice E Jacks	MPA	218		
Ed Caplis	MSCA	218		
Ken Kraft	T.R.A. mslc	218		✓
J.V. Bennett	Mont PIRG	218		✓
Ken Van Stockum	MPA	218		✓
Edward Baron	MPA	218		✓
Jill DuPree	MontPIRG	218		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN AL BISHOP**, on January 30, 1995, at 10:00 a.m.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 220, SB 229
Executive Action:	SB 220, SB 229, SB 109
	SB 66, SB 167

HEARING ON SB 229

Opening Statement by Sponsor:

SENATOR DON HARGROVE, Senate District 16, Belgrade, presented SB 229. The past procedure in Montana in illegal substance trafficking convictions was to then proceed with a civil case to seize assets which were involved in that trafficking. A district court ruled that that was double jeopardy. This bill is designed to change that situation.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, voiced his support of SB 229. This bill is the product of an effort by the County Attorneys Association resulting from a decision by the Ninth Circuit Court in U.S. vs. $405,089.23 U. S. Currency in which that court stated you could not have a criminal prosecution for dangerous drug offenses and a subsequent civil forfeiture action in two separate actions because that constituted double jeopardy. In Montana, law enforcement officials are unable to do both forfeitures and criminal prosecutions for drug offenses. They have to make a choice. In 1979 the Legislature passed the forfeiture statutes. This is a very serious threat to the forfeiture efforts in Montana. Mr. Connor presented the written testimony of Karen Townsend, **EXHIBIT 1.**

Marty Lambert, Chief Deputy County Attorney for Gallatin County, stated he was one of the two people responsible for drafting SB 229. There is a drafting concern in the first paragraph. Lines 13 and 14 of the bill state "person possesses, owns, uses, or attempts to use property when the person knows that it is subject to criminal forfeiture under this section." The defendant simply has to say that he had no idea that they passed a law making this criminal forfeiture. He recommended the committee change the language as follows, line 13: "to criminal forfeiture if the person "knowingly" possesses, owns, uses, or attempts to use property" and to strike the words "~~when the person knows~~". The first sentence would be changed to read, "A person commits the offense of use or possession of property subject to criminal forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture". He prosecuted a gentlemen from the state of California who had moved to Bozeman. He was making methamphetamine in a motel. They were able to apprehend him with over nine ounces of methamphetamine in various stages of manufacture. He had $8500 in a roll in his back pocket. Investigation revealed that he was driving a new truck and they learned that he bought the truck with a sackful of money. He was convicted of possession with intent to sell. The option that was available with the truck, money, and handgun was to file a civil forfeiture proceeding. The defendant stipulated to forfeiture of that property. Under the current Ninth Circuit decision, he would have had to elect whether to file criminal charges or forfeiture proceedings, but he could not do both. This bill is designed to remedy that situation. The protections built into the civil forfeiture bill are still contained in this bill. It provides that the owner's interest in real property is not subject to forfeiture unless it can be proven that it was with the express consent of that owner that the property was either used or purchased with proceeds derived from a criminal drug transaction. An innocent person who had some type of claim or ownership in real estate is protected under this bill.

Lisa Leckie, Lewis and Clark County Attorney's Office, stated she prosecutes drug offenses in this county. This bill is one of the major deterrents against drug activity in Montana. They are now

faced with the alternative of either criminal charges or forfeiture. They cannot do both. Drug dealers know they can serve six months in prison and then walk out and go back to their bank account. Their jail time is their cost of doing business. The drug dealers are now able to keep the money they make on drug deals. When someone is prosecuted for robbing a bank, he is not told to keep the bank's money. A burglar is not told to keep the goods he has stolen. It is unprofitable for them to continue in that criminal activity. Montana is a hub for drug activity. If Montana does not allow forfeitures in addition to the criminal prosecutions, the drug traffickers are going to move to Montana. The forfeiture bill will make sure the drug dealers will not want to stay here. If their money is taken away, it will be unprofitable for them to stay here.

Sheriff Chuck O'Reilly, Montana Sheriffs and Peace Officers Association, stated that this is also a taxpayer's bill. The monies obtained from the forfeitures go into drug investigation funds. The funds are used for various task forces and buy money in drug investigations.

Jim Oberhofer, Montana Chiefs of Police Association, stated they support SB 229.

Mike Batista, Administrator of Law Enforcement Services, Dept. of Justice, announced their support of the bill. There is a real movement by drug dealers away from the larger metropolitan areas to more rural areas such as Montana. This bill will take away the financial gains from the drug market.

Troy McGee, Montana Police Protective Association, stated they support this bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN questioned how the forfeiture would be charged in the complaint. **Mr. Lambert** stated this would become another count in the indictment.

SENATOR STEVE DOHERTY asked if this bill was modeled after the federal criminal forfeiture statute. **Mr. Lambert** stated that the language is taken from our civil forfeiture bill which is in Title 44. There are two main statutes that the federal authorities use to forfeit property. They simply wanted to deal with crimes related to the sale, possession, or conspiracy to sell dangerous drugs. **Senator Doherty** further questioned if they were attempting to avoid the precedents which have come down. **Mr. Lambert** stated that he was unaware of the case law he was referring to. The specific intent of this bill was to avoid the reach of U. S. v. $405,089.23 U. S. Currency. Currently, when

someone who is in possession with intent to sell drugs also has a lot of property derived from drug dealing, they can either take the property or prosecute him criminally but not do both.

SENATOR LORENTS GROSFIELD questioned what happened to the money they would be able to recover. He assumed that the money would go into the special revenue account which is partially statutorily appropriated for training and so on. The statutory appropriation is $125,000 of which they have never gone over $80,000. **Mr. Lambert** stated the money is probably not going to change significantly. This allows them to do what they have been doing before the Ninth Circuit decision.

SENATOR RIC HOLDEN asked how forfeiture would affect the wife of a drug dealer who had no idea of what was going on. **Mr. Lambert** stated she would be subject to the innocent owner defenses. Before a final award could be entered forfeiting property to the State of Montana, she would have the right to defend herself and if the property was ordered to be forfeited there would have to be a sale and half the proceeds, or whatever the court would think was appropriate, would have to be paid to the spouse under those circumstances. This is contained in 205 and 206 which is referenced in the first paragraph of the bill.

SENATOR GROSFIELD further questioned if there would be more money for the fund. **Mr. Lambert** stated they have been seizing money on state forfeitures for a number of years. The money should remain fairly constant. **Ms. Leckie** stated that the drug dealers know right now that she cannot do anything more to them than jail time. Right now she cannot touch what they have gained from dealing drugs.

SENATOR SUE BARTLETT, in referring to the written testimony from Karen Townsend, questioned whether this action repeals the civil forfeiture law which was the subject of the Ninth Circuit case. **Ms. Leckie** stated they were merely providing a mechanism to continue forfeitures in Montana until the United States Supreme Court makes a decision on the Ninth Circuit case. **SENATOR BARTLETT** stated that if this bill passed, we would then have available to law enforcement and county prosecutors both the criminal statutes on possession, sale and forfeiture and also civil forfeiture statutes. **Ms. Leckie** stated that was correct. **SENATOR BARTLETT** asked for an instance in which they might prefer to pursue civil forfeiture and not pursue the criminal side. **Ms. Leckie** stated in the case of a person who was dealing drugs who was also terminally ill, it might not be in the best interest to jail that person. **Mr. Lambert** added that he has done so for a variety of reasons. He chose to protect an informant who was very valuable to the local law enforcement people. He had provided valuable information in drug cases as well as violent crime cases.

SENATOR BISHOP asked about the insertion of the word "knowingly". It seemed that if the word "knowingly" was left out, it would be

a lot easier to prove a case. **Mr. Lambert** stated that in order to convict someone of a crime, they have to show specific proof of a criminal mental intent. "Knowingly" and "purposely" are found throughout the criminal code. Purpose, knowledge, or negligence would have to be included in this bill to prescribe a crime. **SENATOR BISHOP** further questioned what procedure they would have to go through to forfeit the drugs. **Mr. Lambert** stated the drugs are contraband. This bill addresses property beyond that to include property that is derived from the drug dealing.

Closing by Sponsor:

SENATOR HARGROVE stated that drug trafficking is a tremendous drain on many facets of the economy of this country. His experience with the seizure program at the federal level tells him that this is the thing that is most feared by the traffickers because it takes away their tools.

HEARING ON SB 220

Opening Statement by Sponsor:

SENATOR BARTLETT, Senate District 27, Helena, presented SB 220, which establishes that our court systems have the option of keeping their records through a form of electronic storage rather than in docket books. This is not mandatory. It does not replace the ability to retain documents in paper form, but provides another option to our court system to enable them to keep up with the technology which is in common use around the country. Sections 1 and 2 are the new sections.

Proponents' Testimony:

Patrick Chenovich, Administrator of the Montana Supreme Court, stated this bill is a very important part of the court's effort to automate all courts in Montana. It will allow people to file electronically. It is not mandatory. This would allow a case filed in a court of limited jurisdiction to be transferred electronically on appeal. There are provisions in the bill to have the Supreme Court adopt uniform storage rules so that a file is stored the same way at every court location. The court records are stored in ledger books which are susceptible to time and age constraints. **Mr. Chenovich** read a statement on behalf of **Bob Gilbert, Montana Magistrates Association of the Montana Clerks of District Court.** They support this bill and the intent of the bill which allows the courts of Montana to better serve the public by modern technology.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR DOHERTY questioned if there would be any changes in fax filing. He also questioned the status wherein a clerk of court chose not to accept electronic filing. **SENATOR BARTLETT** answered that the intent of the bill was to make this an option and not to require mandatory electronic filing. It may be more effective for small counties to continue to use docket books. **Mr. Chenovick** stated the provisions of this bill covers fax filing. Each district court clerk is an elected official and has control over their records.

SENATOR LINDA NELSON asked if all the counties have equipment for electronic filing. **Mr. Chenovick** stated that all the counties do not currently have equipment to accept electronic filing or electronic storage. **SENATOR NELSON** questioned electronic filing becoming mandatory. **Mr. Chenovick** stated the court has been hesitant about ordering electronic means of record keeping and filing because of the costs. They have been trying to automate the courts since 1988 and the Supreme Court has not mandated any court to do electronic storage or filing.

Closing by Sponsor: **SENATOR BARTLETT** offered no further remarks in closing.

{Tape: 1; Side: B}

EXECUTIVE ACTION ON 220

Motion/Vote: **SENATOR HALLIGAN** moved **SB 220 DO PASS.** The **MOTION CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON 229

Motion: **SENATOR DOHERTY** moved to **AMEND SB 229.**

Discussion: **Valencia Lane** stated the amendment was proposed by Mr. Lambert. On page 1, line 13, following the first person, insert "knowingly". On page 1, lines 13 and 14, following property on line 13, strike the remainder of line 13 through "knows" on line 14. **SENATOR DOHERTY** stated that it moves the language more in line with the traditional criminal law.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion/Vote: **SENATOR DOHERTY** moved **SB 229 DO PASS AS AMENDED.**

The **MOTION CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON 109

Motion: **SENATOR GROSFIELD** moved **SB 109 DO PASS.**

Discussion: **SENATOR GROSFIELD** stated this is the constitutional amendment to give the legislature the authority to set and establish the legal age for gambling.

SENATOR SHARON ESTRADA stated she didn't have a problem raising the age. She questioned why the age 21 is not on the bill. **SENATOR GROSFIELD** stated that 21 is not on the constitutional amendment for drinking either. This gives the legislature the authority to set the age. He has not heard anyone talking about any age other than 21. **SENATOR ESTRADA** stated she has no problem raising the age from 18 to 21, if that is what it was going to be. **SENATOR CRIPPEN** stated that as long as the drinking age is 21, he couldn't see the legislature using another age. Raising the age for gambling to a higher age would only compound the problem when the drinking age is 21.

SENATOR LINDA NELSON stated that she did not like the bill. Eighteen is the age of responsibility. We are dictating to these people that they can't make choices for themselves. If we want to get at gambling for moral reasons, we should do that.

SENATOR DOHERTY stated that there are compelling arguments against gambling by people of any age. He didn't hear any compelling argument about why we should be able to restrict the rights of people between 18 and 21. By passing this, we endorse the idea that we ought to be able to restrict their rights. Once we get into the business of restricting the rights of a certain class of citizens, there needs to be a compelling argument for doing that.

SENATOR BISHOP stated the compelling part of the hearing was that they were concerning themselves with the rights of individuals who didn't seem to have any problem with it themselves. These individuals did not testify against the bill.

SENATOR ESTRADA commented that she sat in the Health Committee the other day and the bill before them affected doctors. The doctors did not know that bill was going to heard that day. They didn't have time to get up here to testify for or against that bill.

SENATOR GROSFIELD stated that no one could guarantee that the legislature would pass a bill setting the age of 21. Every single bill in the legislature deals with restricting someone's rights. This usually involves tradeoffs. Seventy to eighty percent of 18 year olds are still in high school, that may be

where a lot of them were during the hearing on this bill.

Vote: The **MOTION CARRIED** on roll call vote with **SENATORS DOHERTY, HALLIGAN, and NELSON** voting **"NO".**

EXECUTIVE ACTION ON SB 66

Discussion: **Valencia Lane** stated the main amendment is amendment 13 which makes some crimes three strikes instead of two strikes. Subsection 1 (a) has the two strike crimes which are deliberate homicide, aggravated kidnapping or sexual intercourse without consent. The new (b), which is inserted, lists the three strike crimes. She suggested the committee pay attention to the first few lines of new (b). The two strike crimes are two strikes only for those crimes. The three strike crimes are three strikes for any combination of the two or three strike crimes. If you take one two-strike crime and one three-strike crime, you have returned to the way the bill was drafted.

SENATOR DOHERTY stated he supports the bill, however, perhaps there needs to be a warning, "passage of this bill may increase your taxes."

SENATOR GROSFIELD commented that the amendments as drafted do exactly what the committee intended.

EXECUTIVE ACTION ON SB 167

Discussion: **Valencia Lane** explained that Beth Baker asked for an amendment. Starting on page 2, line 29, she inserted a new subsection (h) that reads, "Nothing in this act may be construed to create a private cause of action." She was concerned that the state could be sued by private individuals if they didn't take actions to avoid federal mandates.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:40 a.m.

SENATOR AL BISHOP, Acting Chairman

JUDY J. KEINTZ, Secretary

BC/jjk

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL

DATE Monday 1-30-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

January 30, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 109 (first reading copy -- white), respectfully report that SB 109 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

January 30, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 220 (first reading copy -- white), respectfully report that SB 220 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

January 30, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 229 (first reading copy -- white), respectfully report that SB 229 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 13.
Following: first "person"
Insert: "knowingly"

2. Page 1, lines 13 and 14.
Following: "property" on line 13
Strike: remainder of line 13 through "knows" on line 14

3. Page 1, line 14.
Following: "that"
Strike: "it"

-END-

Amd. Coord.
Sec. of Senate

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/30/95 BILL NO. SB 109 NUMBER

MOTION: Senator Grosfield SB 109 DO PASS

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY		✓
SHARON ESTRADA	✓	
LORENTS GROSFIELD	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
LINDA NELSON		✓

SEN:1995
wp:rlclvote.man

SB 229

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 1/30/95
BILL NO. SB229

TESTIMONY IN SUPPORT OF SB 229
PRESENTED BY KAREN S. TOWNSEND
DEPUTY COUNTY ATTORNEY FOR MISSOULA COUNTY

My name is Karen S. Townsend and I am a deputy county attorney for Missoula County. I have worked as a deputy county attorney for Missoula County, an Assistant Attorney General assigned to the County Prosecutor Services Bureau, and a Director of Training for the National College of District Attorneys since my graduation from the University of Montana Law School in June, 1976. Since July 1, 1990, when I returned to the Missoula County Attorney's Office from Texas, I have prosecuted almost all of the drug cases in Missoula County and have also been responsible for handling all of the drug forfeiture actions which were filed in connection with those criminal prosecutions.

I have been convinced, both in my work in Missoula and in my contacts with the National College of District Attorneys, that drug forfeiture is a powerful tool which can be used in combatting the distribution of illegal drugs. Since 1990, our office has made use of the forfeiture statutes to secure for the Missoula City Police Department or the Missoula County Sheriff's Department or the Montana Narcotics Investigation Bureau assets from drug offenders. We have secured cash, personal property including vehicles, guns, and other forms of personal property. These agencies, in return have made use of their forfeiture fund to help our office acquire equipment that all of us can use in trial presentation, have made their funds available to fund training for some of the lawyers, and have contributed to the budget in our office to support prosecution for drug offenses.

Last fall, the 9th Circuit Court of Appeals reached a decision in a civil

forfeiture case in which they held that in federal court, US Attorney's offices could not proceed separately on a criminal prosecution and a separate civil forfeiture action seeking to forfeit property associated with the criminal conduct because to do so would be a violation of double jeopardy. They further held that in order to pursue forfeiture, the US Attorneys would have to proceed by means of criminal forfeiture, which is permitted under their laws, thus having one action which accused a person of a crime and also sought forfeiture of any relevant property. Although that decision is being challenged by the federal government, and there may be a reversal by the entire 9th Circuit, or by the United States Supreme Court, at this point, the law in the 9th circuit suggests that we may no longer be able to proceed in Montana in separate actions for criminal prosecution and civil forfeiture. In fact, I am currently briefing the question in the Fourth Judicial District where a defendant was convicted in federal court of drug offenses based on a county investigation, and where we filed civil forfeiture against guns, property and cash. The defendant is claiming that our forfeiture action is barred by the double jeopardy clause based on the 9th Circuit decision.

If the 9th Circuit decision is accepted by our Supreme Court, unless SB 229 is passed, prosecutors in Montana will be forced to make an election between proceeding on a criminal conviction or on forfeiture of assets. This bill will not require the prosecutor to proceed this way, since there may be cases in which the prosecutor simply does wish to elect one way or the other. Then, the current forfeiture proceedings can be followed. This bill will allow us to do both in one proceeding, which, under current law, we cannot do. I truly believe that the ability

EXHIBIT 1
DATE 1-30-95
SB 229

to combine criminal convictions with forfeiture of the profits from distribution of drugs acts as a deterrent in the fight against illegal drugs. Without this bill, one of our weapons could be taken away.

This bill does not take away any rights from persons, but in fact provides additional protections for persons whose property is sought. The burden of proof becomes beyond a reasonable doubt instead of preponderance of the evidence, and the Defendant is entitled to a jury trial on the issue of forfeiture, something not permitted under current Montana forfeiture laws.

I would ask the committee for support of this bill, because, by inaction, we are in danger of losing the ability to forfeit property which either facilitates the distribution of illegal drugs, or is acquired by means of distribution of illegal drugs.

Karen S. Townsend

DATE 1-30-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 220
SB 229

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Check One

Name	Representing	Bill No.	Support	Oppose
John Connor	MT County Attys Assn	SB229	✓	
Patrick C Henrich	MT Supreme Court	SB220	✓	
Chuck O'Reilly	MT Sheriffs & Peace Officers	SB229	✓	
Marty Lambert	Gallatin County Atty	SB229	✓	
Lisa Leckie	Lewis & Clark County Attorney's Office	SB229	✓	
Troy McGee	Mont Police Protective Assoc ~~Mont Chiefs of Police~~	SB229	✓	
Charles R. Brooks	Yellowstone County	SB 220	✓	
Kathy McGowan	MSPOA	229	✓	
Jim Oberhofer	MCOPA	229	✓	
Joe Roberts	Mt. City Attys Assoc	229	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 2, 1995, at 9:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 189, SB 272, HB 108, HB 37
Executive Action:	SB 13, SB 132, SB 167, SB 149, SB 272, HB 37, HB 108

EXECUTIVE ACTION ON SB 132

Motion: **SENATOR AL BISHOP MOVED THAT SB 132 DO PASS.**

Discussion: **SENATOR BISHOP** thought the biggest concern was the insurance industry objections over the augmented estate issue. Also, the concern of the Department of Revenue was the cost, estimated at $150,000 to 300,000, but that they had supported the bill, he said.
He explained the concept of augmented estate makes available to the surviving spouse a certain percentage of an insurance policy if the beneficiary is other than the spouse, depending on the

length of the marriage.

CHAIRMAN BRUCE CRIPPEN discussed a key-person policy on businesses and there was confusion among the committee on whether or not this issue would be included in the bill.

Valencia Lane explained that existing law already provides for life insurance to go into the augmented estate, done in 1993. This bill does not change that, she said, and the amendments offered by **Mr. Moreen** would change that.

Valencia Lane explained there were four sets of amendments. Some of the members felt they would be more comfortable with the amendments from **Mr. Moreen** which exempted life insurance from the augmented estate.

Dennis Moreen explained the amendments he presented. Part of the amendments pertain to the augmented estate, he said, and the other part dealt with the notices that are the duty of insurance companies as pertaining to murder or divorce. In such cases, the insurance designations are void, he said.

SENATOR SUE BARTLETT said she would not be comfortable taking insurance out of the augmented estate. Some agreed, some disagreed. **SENATOR STEVE DOHERTY** agreed. He thought it would be appropriate for the insurance company to pay the money to the court and let the court decide the distribution. Insurance can be used as a new means of disinheriting the spouse, he said.

SENATOR BISHOP asked what was so sacred about insurance? He said **SENATOR DOHERTY** was right in that other property is brought back in to the augmented estate. If the spouse consents to the transactions, all problems will be solved.

SENATOR BARTLETT said because of the multiplicity of insurance products now, it was a good way to move assets and disinherit a spouse.

CHAIRMAN CRIPPEN said that the only part of the policy that would be of value at the time of death is the cash surrender value and any accumulated dividends.

SENATOR LARRY BAER said he did not think it could be used as a disinheritance tool and that it was a matter of specific intent.

SENATOR BISHOP said that if a gift is made and there is no valuable consideration then you make a transfer and it is brought back into the estate within three years of death.

CHAIRMAN CRIPPEN used the example of a parent buying life insurance and listing as beneficiaries children of a first marriage. If there was a falling out of the second marriage and the step-father was financially strapped, he could contest the distribution. If the child was given money to buy the insurance

on the parent, however, it would not be included, he said. It passes outside of probate and outside of tax purposes, he said.

SENATOR BARTLETT questioned whether or not that situation would fall in the augmented estate category. She said the determination would fall to the ratio of assets.

SENATOR DOHERTY said it would only happen when the spouse elects to do anything and asks for an augmented estate in electing against the will. He disagreed with the cash surrender value of a policy saying it would not be worth much.

SENATOR BISHOP didn't see the problem with bringing the money into the augmented estate. If there were plenty of assets, he said, the judge could do whatever he saw fit, and it would probably only delay the payment for several months.

SENATOR LORENTS GROSFIELD said about the only time this would occur is if a man would buy a 5 million dollars policy shortly before death and give it to someone other than the spouse. He thought the chance of this happening would be remote. He thought whatever was stipulated by the person buying the insurance should be honored and paid immediately upon death.

SENATOR SHARON ESTRADA said she did not think the people at that table had the right to interfere with someone's wishes.

Motion: **SENATOR BISHOP WITHDREW HIS MOTION.**

CHAIRMAN CRIPPEN asked for a show of hands on who would be in favor of working on these amendment and taking insurance out. Eight members for in favor; three voted "no." **The Chairman** instructed the legal staffer to assist in making the changes.

Valencia Lane, the committee staffer, explained the additional amendments to the bill. She said the amendments by Greg Petesch were technical corrections.

Motion: **SENATOR GROSFIELD MOVED THE PETESCH AMENDMENTS.**

Vote: The vote **CARRIED UNANIMOUSLY** by oral vote.

Ms. Lane explained additional amendment by the Department of Revenue. They simply want to make the same reference in another section of law, she said, to match what is being done in the bill.

Motion: **SENATOR GROSFIELD MOVED THE DEPARTMENT OF REVENUE AMENDMENTS.**

Discussion: Discussion followed about the fiscal note and it was suggested that the bill fell within the contingent voidance provisions. If that was the case, the chairman asked if they wanted to adopt this. The House can exclude the amendment if

they want to blow the bill, **SENATOR BAER** offered.

Vote: The **MOTION PASSED** with on an oral vote with **SENATOR DOHERTY** voting, "no."

Discussion: **CHAIRMAN CRIPPEN** said that with the motion went the provision that **Valencia Lane** would draft a contingent voidance amendment.

EXECUTIVE ACTION ON SB 167

Discussion: **SENATOR STEVE BENEDICT** was asked to speak to the bill. He asked the committee to look at the second grey bill dated February 1 and the amendments dated January 31. It was pointed out that there were amendments from both **Beth Baker** and **SENATOR DOHERTY.** The sponsor said that he had incorporated **Beth Baker's** amendment in the set of amendments, which took it though Section 8. The original had only five, he said. Page 8 of Section 5 eliminated reference of the legislative finance committee. He struck everything in Section 5, he said, in an attempt to streamline the bill, except the requirement of the Budget Office recommendations for reporting federal mandates. He eliminated the requests from outside sources from the Office of Budget Planning. He took out the dates of reporting and it would be included in the next budget cycle. He said that **SENATOR DOHERTY** had shared some amendments with him and that he had adopted some of his ideas into this bill, however, he felt that the language watered down the bill until he was not comfortable with it. He said that **SENATOR DOHERTY'S** amendments would have put everything into the Governor's office and he said they all knew the Governor did not have the staff. The OBP gets the requests and has the information anyway, he said.

SENATOR DOHERTY said the second grey bill is vastly improved. His amendments, he said, make the investigation and recording the responsibility of the Governor's office with the intention that he could assign them to whomever or whatever agency he wants. It would be unusual to specify the OBP he thought, in that it would restrict the Governor.

CHAIRMAN CRIPPEN asked the sponsor if he would object to this additional amendment, to which he replied that he would prefer not to because it would water down the language of the bill. The chairman asked if it would not be ideal to rest the responsibility with the Governor. The sponsor did not object.

SENATOR GROSFIELD said that if the Governor made a request for information and action on a specific mandate, the Governor would have a lot more force behind the request than the OBP would.

CHAIRMAN CRIPPEN said that he would prefer to see the Governor in control over bureaucrats, who would not have the accountability necessarily.

SENATOR BISHOP thought it would strengthen the bill.

Motion/Vote: **SENATOR BAER MOVED TO ADOPT THIS FACET OF SENATOR DOHERTY'S AMENDMENT AND WHEREVER OBP OCCURS IN THE BILL, THE GOVERNOR'S OFFICE WOULD BE INSERTED.**

Vote: The vote **CARRIED UNANIMOUSLY** by oral vote.

Discussion : **SENATOR DOHERTY** said he tried in his amendments to clean up the language of the poorly drafted bill. He tried to identify whether or not it was legal or illegal to tell the Governor to fight the mandates. On Page 4 under the federal statutes heading, 20 statutes were listed. He struck them and inserted "any federal statutes." He said if they went to the exhaustive measure of listing each one, if they got another one not listed, there might be the argument that the legislature did not want that particular one to be considered. Or, he said, they could add more.

SENATOR BENEDICT said that 74 members of the body had signed the bill and were comfortable with the language that was in there. He said he had made as much of an attempt as he could to bring some other ideas in, but he would like to leave it the way it was.

CHAIRMAN CRIPPEN expressed his concern about the fact that the courts would hold conclusive a long list as stated, notwithstanding the language of "included in but not limited to the following:".

SENATOR GROSFIELD stated his concern that there may be a problem with future acts, if, for instance a huge federal mandate were passed after the effective date of this act. **The chairman** said they could add "present and future." And they agreed that the wording would be added to either version of the bill.

When asked by **SENATOR BARTLETT** to explain why the listing of the mandates were important to him, **SENATOR BENEDICT** answered that they were from listings used in Colorado and California documents of the same type and also constituents had asked specifically for some of them. On the same topic, **SENATOR CRIPPEN** added a comment that the other legislators might not be willing to go beyond the list either.

SENATOR GROSFIELD asked **SENATOR DOHERTY** make his corrections to the bill for a later presentation. The senator agreed to amend the February 1 version of the bill by cleaning up, but not watering down, the bill.

SENATOR BENEDICT appreciated the attempt by **SENS. DOHERTY AND GROSFIELD,** but did not ask them to go on the bill. He said he would rather the committee deal with his amendments, accepting or

rejecting as proposed. He feared loss of intent.

EXECUTIVE ACTION ON SB 149

Motion: **SENATOR REINY JABS MOVED TO TAKE SB 149 OFF THE TABLE.**

Discussion: **CHAIRMAN CRIPPEN** explained that this bill is a Constitutional Amendment to remove two words, "this full".

SENATOR MIKE HALLIGAN said he believed that the Supreme Court had reversed itself and then followed its own precedent in reversing itself in interpreting the full legal redress in cases. Then they saw they had made an error and went 180 degrees and said they were wrong, he stated. Now he said the interpretation is not being interpreted liberally or being misconstrued. So the bill taking away people's full legal redress when not being abused was not responsible, he said.

SENATOR BISHOP agreed with the senator. He said the courts were loath to reverse themselves. He thought it would cause undue confusions.

Vote: By roll call vote, the **MOTION TO TAKE SB 149 FROM THE TABLE PASSED** by a 6 to 5 margin.

{Tape: 1; Side: B; Approx. Counter: 0.0}

HEARING ON SB 189

Opening Statement by Sponsor:

SENATOR JEFF WELDON, Senate District 35, Arlee, sponsor for SB 189, brought this bill to the committee on behalf of the Department of Justice. The primary purpose would be to give the department exclusive authority to suspend or revoke the drivers' license of a tribal member seized within the boundaries of an Indian reservation by tribal authorities following a testing refusal under authority of a tribal implied consent ordinance or law. It would also amend the process by which a motorist who refuses testing under the implied consent laws are given notice of their right to a hearing to contest a license suspension or revocation if the petition is filed in district court to challenge the license seizure and suspension or revocation. On the first part of the bill, he explained, the department began working with the tribes within Montana last fall. Over the past few weeks, the Salish-Kootenai Tribe had raised concerns about the language. The legal staff of the tribe had agreed with the concept of the bill, however, they had the concerns about the language. The Department of Justice has been working with the tribes and they are all optimistic that they can agree and collectively propose amendments to the bill. He asked the Chairman to delay action on the bill until they could complete

negotiations with the tribe and arrive at mutually agreeable language. He thanked the chairman for his patience.

Proponents' Testimony:

Attorney General Joseph Mazurek appeared to honor a commitment made to the Salish/Kootenai tribe on the previous day. He said that they had agreed that the committee take no action on the bill until they had an opportunity to meet with members of the tribe and other tribes. No one has a disagreement in principle, he said, but the language was in question. He presented a letter from the tribe. **(EXHIBIT 1).**

Brenda Nordland, Department of Justice, addressed the primary purpose of the bill which she described as a gap in Montana's implied consent law as it applies to seizures occurring on the Indian reservations under tribal law. The secondary purpose, she said, changes the procedure notice requirements and codifies the practice currently used throughout the state regarding challenges to the implied consent. She presented written testimony and read from the text. **(EXHIBIT 2).**

A letter, addressed to **Brenda Nordlund, Department of Justice,** from **Llevando Fisher, President, Northern Cheyenne Tribal Council,** was presented after the hearing. **(EXHIBIT 3).**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN asked about the non-Indians on the reservation and **Brenda Nordland** said the bill did not address non-Indians. They are covered under existing law. This bill deals with tribal to tribal arrests and seizures.

SENATOR JABS asked what the procedure would be at present for a non-Indian picked up on the reservation?

Ms. Nordland said she did not know and thought it was through cross-deputization between various tribes.

Attorney General Mazurek answered that the Montana Highway Patrol did not have the authority over Indian members on the reservation unless they have a state-tribal agreement. The Flathead Reservation allows a memo of understanding for specific authority to be given by the appropriate law enforcement department, as some other do. The tribal police do not have the authority to pick up a non-Indian for DUI, he said, but if they stop someone, then they call the proper authority and proceed.

SENATOR JABS inquired if the bill was tight enough so that it would not be worded to eventually cause a non-Indian to go through the tribal courts.

Attorney General Mazurek stated it was not contemplated. Even under the agreement on the Flathead reservation, there is no authority even where there is shared responsibility to issue citations. If a citation is issued to a non-Indian, it goes to state or justice of the peace court.

SENATOR JABS was worried about "the camel's nose under the tent," in that future agreements would include non-Indian jurisdiction.

The Attorney General assured him it would not.

SENATOR RIC HOLDEN asked about Page 2, Part B. He thought that if they enter into this agreement and then pass **SENATOR HALLIGAN'S** bill about drivers' licenses, it would seem to give Indian police officers a right to take non-Indian licenses.

Attorney General Mazurek said that nothing the legislature does can affect the jurisdiction of the tribal courts. That is a matter of federal law. This bill would only allow an agreement with the tribal government that the state would honor a tribal suspension. There are over 500 tribal-state agreements in the state, he said. They could not alter the jurisdiction of tribal courts over non-Indians.

SENATOR LINDA NELSON asked if it was to apply to all tribes, or would they have to negotiate with each one separately?

The Attorney General said that each would be done separately. They are separate, independent sovereigns, he said.

SENATOR GROSFIELD asked if in a practical situation where an tribal officer stops a DUI who is a non-Indian on a reservation, was there a time for detention until the appropriate authority could be summoned.

The Attorney General said that it depends on the reservation. He gave an example of the Flathead agreement wherein a Montana Highway Patrolman could stop and detain a violator until the appropriate tribal representative could be called. In answer to a subsequent question, he said that tribal police have like authority.

Closing by Sponsor:

SENATOR WELDON said that the Department of Justice would be happy to show the committee a similar agreement between the state and the tribes and that these agreements actually contain a negative declaration that the agreement affects jurisdiction. They would only affect the procedure by which the state recognizes a tribal government suspension of a state license. They assured the chairman that they would work as quickly as possible for a resolution.

HEARING ON SB 272

Opening Statement by Sponsor:

SENATOR GROSFIELD, Senate District 13, Big Timber sponsored SB 272, an act that he said deals with paperwork kept and handled by the Department of Revenue. It is an issue that came to him from the City Attorney. He said it was paperwork required that is currently required for a surviving joint tenant spouse, without a real point to it because there is no inheritance tax due to the Department.

Proponents' Testimony: **Bob Jovick, a lawyer from Livingston,** said he would like to think that he represents the consumers. He said for years in his practice, he has hated to see the paperwork push as it comes to joint tenancy. In Montana, he said, there is no probate required in the case of a husband and wife joint tenancy when one or the other dies. In order for their real property to be sold, the lien of the inheritance tax division has to be released. In order to release that lien, he showed a INH2 form, a 4-5-page form, listing all assets to be sent to Helena, approved there and sent back to the county clerk and recorder where it is filed. That releases the lien. It is pointless, he said; there is no inheritance tax due for husband and wife in joint tenencies. The law says that the real property automatically passes to the surviving spouse. The only thing needed is the release of the inheritance tax lien. The State of Wyoming has for years had a simplified procedure, requiring only a statement with the clerk and recorder with an attached death certificate. That releases the lien. He had spoken to **Jeff Miller of the Department of Revenue,** who had input into the drafting of this bill. He introduced **Larry Allen of the Department of Revenue** to speak on any specifics the committee may ask. The bill would hopefully free up time for members of the busy inheritance tax departments to process returns where tax is actually due, he said.

Opponents' Testimony:

None.

Informational Testimony:

SENATOR BISHOP asked **SENATOR GROSFIELD** if he meant that they would just file an affidavit, then? He supported the bill. Also, who was going to furnish the affidavit, he asked.

SENATOR GROSFIELD said it would maybe be furnished by the Department of Revenue, or maybe one would be provided by the county offices.

Mr. Jovick said that the Inheritance Tax Division could do a standard sample affidavit to be made available at the county offices, without any necessary involvement of lawyers.

SENATOR BARTLETT said she was a former clerk and recorder and had dealt with INH3 and INH2's. She asked about the language, "a personal representative need not be appointed," and wondered if it was not going through probate.

Mr. Jovick said that was correct. He said the bill only addresses instances where there is no probate filed and determination of joint tenancy with respect to real property.

SENATOR BARTLETT asked if he thought the affidavit would formally transfer the ownership to the surviving joint tenant with the bill?

Mr. Jovick said that current Montana law already automatically on the date of death, terminates the joint tenancy. This bill would require that with the filing of the affidavit, any lien that the inheritance tax division might have would automatically be lifted with the filing of the affidavit.

SENATOR BARTLETT said she would insist that the provision for attaching the death certificate be taken out because once the information had been filed, it would be recorded, including the certificate. It is then public information and anyone who wants to look at that has access to it. Death certificates are not public information under the statutes having to do with vital statistics and she thought it would be inappropriate. She also thought that if the affidavit is recorded, the form itself should be sufficient unto itself if it includes the real property. She agreed with the bill and thought the process cumbersome to grieving people.

Mr. Jovick said the omission of the death certificate would be even more helpful.

SENATOR BISHOP asked if there was a procedure for getting the inheritance tax waiver from the Department of Revenue transfer agent. What would happen?

SENATOR GROSFIELD said that in respect to personal property, you would still have to go through the procedure.

SENATOR BISHOP asked what they would file to get an inheritance waiver for a stock certificate then?

Larry Allen from the Department of Revenue, said a INH3 would still have to be filed for stocks and bonds and normal procedure would follow. For real property, they would have to indicate they were a spouse and filing for joint tenancy and would not have to fill out that section of the form.

SENATOR HALLIGAN asked about the affidavit portion. He did not think they would have the forms at the clerk and recorder office. He thought a simpler statement should be required, such as a "notarized statement," or "verified statement." People would not

know exactly what that means.

Mr. Jovick said that a simple two or three sentence statement of the circumstances such as the death had taken place and that they were the owner of the property described, is contemplated. Sample forms could be compiled in various places.

Closing by Sponsor:

SENATOR GROSFIELD said part of the reason for not including stocks and bonds was that the stockbroker would want some kind of documentation that they have the authority to process it. As far as real property, he thought **SENATOR BARTLETT'S** suggestions would be fine. He had not wanted to sign the fiscal note, which said it had no impact. He thought it might have a minimal impact, but it would certainly save staff time and money. He urged the committee to concur.

HEARING ON HB 108

Opening Statement by Sponsor:

REPRESENTATIVE JOHN COBB, House District 50, Augusta, introduced HB 108, an act requiring a person convicted of a dangerous drug misdemeanor to attend a dangerous drug informational course. The language in Section 1, he said, would be the same language used for DUI's. If a person is caught on a DUI, they have to take a course and the judge can further require a treatment course if he deems it necessary. If the violation is a felony, it would not apply because he said, "you'd have to go away for a while." He estimated 279 juveniles would have to take this course each year. He said that if some of the juveniles were caught earlier in the drug cycle, hopefully some could be turned around. Last year, he quoted, 4,800 DUI cases were charged; 3,500 were first-time offenses; only 1,000 repeated; and only 40 repeated the third time. Since the people pay for the course themselves, he thought it would be a deterrent. He thought that a gap existed between alcohol and drug offenses. Misdemeanor drug charges are smaller charges, under 60 grams of marijuana. If the people were unable to pay, treatment centers charge the others to make up the difference so there is no fiscal impact.

Proponents' Testimony:

Darryl Bruno, Administrator of the Alcohol and Drug Division for the Corrections and Human Services, spoke in support of the bill. He submitted written testimony. **(EXHIBIT 4).** He also believed it to be an early intervention program. The earlier the intervention, he said, the more hope they had to keep people out of the prison system, which would be a major reduction in cost to the people of the State of Montana.

Kathy McGowan appeared on behalf of the Chemical Dependency

Programs of Montana, and said that the organization represented out-patient and some in-patient CD programs across the state. CDPM also supported the bill. She said they should have no trouble whatsoever adapting to a drug information course. On a personal note, she spoke about an acquaintance who had recently gone through the alcohol court school and said it was an intimidating and humiliating experience and said he would definitely not drink and drive again. She thought it would also be true for this particular course.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR NELSON asked if they were talking about two different courses, drug and chemical dependency treatment.

Mr. Bruno answered that there was currently a DUI court school course approved by their office. This would be a course they would incorporate within current curriculum, including drug laws and effects. In answer to a further question about costs, he replied that based on the cost of each school, averaging from $125 to $200, based on providing costs. He said that they generally re-figure their court school costs to cover those not able to pay. He did not know what the percentage of those would be. When the Senator asked about insurance, he said if treatment was recommended, it alone would be covered by those covered by insurance. The others are billed on an ability to pay backed by state and federal support. He said he would try to provide an estimate of those unable to pay.

Closing by Sponsor:

REPRESENTATIVE COBB said he thought the numbers of those unable to pay would be about 15 per cent as an estimate. Hopefully, some kids would be saved from doing drugs, he said, and he hoped for a success rate of up to 20 to 30 percent. The immediate effect is not just getting a misdemeanor and going on probation, but they would have to do this on a weekly basis and would be more of a harassment effect. He hoped to prevent future felonies.

HEARING ON HB 37

Opening Statement by Sponsor:

The sponsor was not present so **SENATOR MIKE HALLIGAN, Senate District 34 of Missoula,** presented the bill to the committee. He said he had actually done the bill draft request on this bill on behalf of the Department of Administration. The reason behind the bill was that in the early days when the statute was passed inmates going to the Montana State Prison were not represented by

counsel as they are today and there was no availability of libraries inside the prison to assist inmates to pursue cases. The statutes of limitations was trying to reflect some sensitivity to those early days when resources were not available. Now they are available, there is Constitutional law and case law and there is no longer a tolling of the statute of limitations, he said.

Opponent's Testimony: **Bill Gianoulias, attorney, working for Risk Management in Tort Defense, Department of Administration** helped to explain the bill. At one time there was a need to allow inmates an extension on the statute of limitations because access to courts may have been difficult. He did not think it was difficult any more. The best example, he said, is that out of 203 cases they were currently defending, 97 are brought by inmates. Inmates own computers in prison or have access to them. They also have a library paid for by the state and there are inmate law clerks within the prison. Nobody gets to prison without having a lawyer in the first place and there are fill-in-the-blank forms available to file civil rights claims in federal court and once filed, federal courts accomplish service on the state. There is no reason then for a five-year statute of limitation extension any more, he said. He said one tricky portion had to do with retroactivity in the bill. They did not want to cut anyone off, so they provided that no one would be cut off by the passage of the bill. The minimum time anyone would have to recognize that their limitations would be decreased would be six months. He also presented written testimony. **(EXHIBIT 5).**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

SENATOR HALLIGAN closed on HB 37 without further comments.

{Tape: 2; Side: A; Approx. Counter: 00; Comments: .}

EXECUTIVE ACTION ON SB 13

Motion: **SENATOR HALLIGAN MOVED THAT THE COMMITTEE ADOPT THE AMENDMENTS TO SB 13 AS CONTAINED IN (EXHIBIT 6).**

Discussion: **SENATOR HALLIGAN** explained that his amendments addressed the concerns of **SENATOR SPRAGUE** that there would be an insurance problem for young people getting drivers' license suspensions. He said that in case of non-appearance, there would

be a letter going from the court asking the violator to appear or have the license suspended. He said he had specified in the amendments that initial notice must be followed by a written notice from the court by first class mail. If after the stop, a person does not have bail, they can appear on a certain date and if they don't, the letter goes out asking them to appear. If they do not appear, their license will be suspended. If they are 18 years old, it may cause a major problem with their insurance, so he said that they had included in the amendments language specifying that they would not be included in special risk classification and that their rates supposedly can't be affected. Now, he said, the insurance companies don't like that at all. He assured a full hearing in the House on this bill so that the insurance companies could come in to debate it.

SENATOR BARTLETT said it was possible to remove the rate section and deal with it though the motor vehicle report that the Department of Justice can or cannot release. They can make differentiation about the kinds of information they release to the insurance companies, she said.

Valencia Lane said that **Brenda Nordland** told her it wouldn't work to try to adopt the same rule here as in the minors in possession act.

CHAIRMAN CRIPPEN said that the insurance companies would get an opportunity to present their case in the House hearings concerning possible rate changes.

Vote: The motion to adopt the amendments **CARRIED UNANIMOUSLY** by oral vote.

Motion/Vote: **SENATOR HALLIGAN MOVED SB 13 DO PASS AS AMENDED.** The motion **PASSED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 37

Discussion: **SENATOR DOHERTY** asked about the statute of limitations for minors. On Page 1, Line 17, "minority" was stricken, so did it also affect the statute of limitations for minors?

SENATOR BISHOP said that Line 14 said, "either a minor or seriously ill." Did that take care of it, he asked?

Valencia Lane commented that there were no time limits on a minority and five years on a mental illness.

SENATOR HALLIGAN explained that they were limiting the disability for serious mental illness to five years and were not trying to restrict a minor.

SENATOR DOHERTY asked if it was five years from the onset of the serious mental illness or five years after the mental illness?

Valencia Lane said she thought it was from the onset. The first sentence said that the time is tolled during the period of the disability whether it is minority or mental illness. The second sentence said it would not be tolled more than five years, she said. But, she said, these were not changes in existing law, merely a re-statement.

CHAIRMAN CRIPPEN said they would wait for one day for clarification on this language.

EXECUTIVE ACTION ON SB 272

Discussion: **SENATOR GROSFIELD** explained the amendments he had written addressing Page 2, Line 23 striking the word "affidavit" and inserting the words, "acknowledged statement." He further stated that on Page 2, Line 24 he struck a sentence regarding a death certificate and added, "the acknowledged statement must include a legal description of the real property."

Motion/Vote: **SENATOR GROSFIELD MOVED TO ADOPT THE AMENDMENTS.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR GROSFIELD MOVED THAT SB 272 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON SB 37

Discussion: **CHAIRMAN CRIPPEN** asked **Mr. Gianoulias** about the language on Section 1, Subsection 1. He questioned when the tolling start on the seriously mental illness provision?

Mr. Gianoulias stated that the bill was not intended to change that. He quoted a case called Bestwina. All this tried to do was eliminate the time extension for people incarcerated. The deletion of the word "minority" at the end was because it was not a disability, he said, but the tolling would still apply to a minor.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 37 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 108

Discussion: There was discussion about the fiscal note, where the money comes from, and that the judge may recommend treatment.

SENATOR HALLIGAN said he had clients that had to fight with the judges over treatment issues. He thought the bill was far more structured that it at first appeared.

SENATOR BAER was concerned about duplication in the drug and alcohol programs.

SENATOR HALLIGAN read and determined that this bill would only apply to misdemeanor charges and sentencing would not include any treatment or assessment.

SENATOR ESTRADA said she was concerned about the costs of the program.

SENATOR NELSON commented that the committee should bear in mind that other people will pay the costs for those who are unable to pay and others will pay the insurance costs for those who are unable to pay.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 108 BE CONCURRED IN.** The **MOTION CARRIED** by oral vote with **SENS. NELSON AND ESTRADA** voting "no."

ADJOURNMENT

Adjournment: **CHAIRMAN BRUCE CRIPPEN** adjourned the hearing at 12:35 p.m.

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL EXECUTIVE SESSION DATE 2-2-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		
Valencia	✓		

SEN:1995
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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL HEARING 10 A.M. DATE 2-2-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 13 (third reading copy -- blue), respectfully report that SB 13 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 10.
Following: "VIOLATION;"
Insert: "PROHIBITING INSURANCE PREMIUM INCREASES OR SPECIAL RISK CLASSIFICATIONS BASED ON SUSPENSION OF A DRIVER'S LICENSE FOR FAILURE TO APPEAR OR PAY;"
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 33-16-201 AND"

2. Page 2, line 3.
Following: "restitution."
Insert: "A suspension under this section may not be considered for insurance purposes as a special risk classification under Title 33 or be used as the basis for increasing a person's insurance premiums."

3. Page 2, line 7.
Following: "court."
Insert: "The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days."

4. Page 2, line 8.
Insert: "**Section 2.** Section 33-16-201, MCA, is amended to read:
"**33-16-201. Standards applicable to rates.** The following standards ~~shall~~ apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates ~~shall~~ may not be excessive or inadequate, as ~~herein~~ defined in this title, ~~nor shall~~ and they may not be unfairly discriminatory.

(b) ~~No~~ A rate ~~shall be held to be~~ is not excessive unless ~~such~~ the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which ~~such~~ the rate is

PV
Amd. Coord.
Sec. of Senate

applicable.

(c) ~~No~~ A rate ~~shall be held to be~~ is not inadequate unless ~~such~~ the rate is unreasonably low for the insurance provided and the continued use of ~~such~~ the rate endangers the solvency of the insurer using ~~the same~~ it or unless ~~such~~ the rate is unreasonably low for the insurance provided and the use of ~~such~~ the rate by the insurer using ~~same~~ it has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration ~~shall~~ must be given, to the extent applicable, to past and prospective loss experience within and outside this state, to ~~revenues~~ revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, ~~deemed~~ considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which ~~such~~ the experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of ~~any such~~ an insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record ~~which~~ that is 3 years old or older or for any driver's license suspension under 61-5-214. ~~Such~~ The classifications and modifications ~~shall~~ apply to all risks under the same or substantially the same circumstances or conditions.""

-END-

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 37 (third reading copy -- blue), respectfully report that HB 37 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

281331SC.SPV

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 108 (third reading copy -- blue), respectfully report that HB 108 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

281333SC.SPV

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 272 (first reading copy -- white), respectfully report that SB 272 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 23.
Strike: "affidavit stating"
Insert: "acknowledged statement"

2. Page 2, line 24.
Following: "terminated."
Strike: "A copy of the certificate of death must be attached to the affidavit."
Insert: "The acknowledged statement must include a legal description of the real property."

-END-

Amd. Coord.
Sec. of Senate

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2-2-95 BILL NO. SB 149 NUMBER 1

MOTION: Motion By Sen. JABS TO TAKE IT OFF THE TABLE

VOTE: 6-5 - OFF THE TABLE.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER	/	
SUE BARTLETT		/
AL BISHOP, VICE CHAIRMAN		/
STEVE DOHERTY		/
SHARON ESTRADA	/	
LORENTS GROSFIELD	/	
MIKE HALLIGAN		/
RIC HOLDEN	/	
REINY JABS	/	
LINDA NELSON		/
	6	5

SEN:1995
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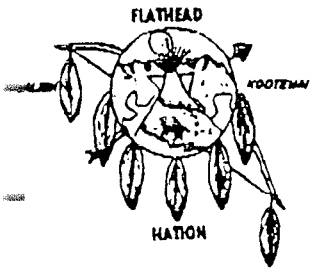
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-2-95
SB 189



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

February 1, 1995

seph E. Dupuis - Executive Secretary
om L. Clairmont - Executive Treasurer
ernice Hewankorn - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Michael T. "Mickey" Pablo - Chairman
Rhonda R. Swaney - Vice Chairwoman
Carole McCrea - Secretary
Lloyd Irvine - Treasurer
Louis Adams
Elmer "Sonny" Morigeau, Jr.
Henry "Hank" Baylor
D. Fred Matt
Donald "Donny" Dupuis
Mary Lefthand

Ms. Beth Baker
Office of the Attorney General
Department of Justice
215 North Sanders, Justice Bldg.
Helena, Montana 59620-1401

Re: Senate Bill 189

Dear Ms. Baker:

This letter is written to confirm the understanding reached between our Legal Department and the Office of the Attorney General on the afternoon of February 1, 1995.

As you are aware, the Confederated Salish and Kooteni Tribes have reviewed Senate Bill 189. The concept of enabling state agencies to accept license revocation, suspension, and reinstatement proceedings conducted by Tribal peace officers and Tribal Courts is admirable. The State has, until recently, routinely done that on the Flathead Indian Reservation. For that reason, among others, we believe that the concept is already in place. The state now appears to believe otherwise.

Both governments, I believe, genuinely desire to reinstate a previously functioning system of state law. We believe that the present amendments, however, are more than is necessary to do the job. We believe that more acceptable terms can be met.

In line with our mutual goal to achieve a workable system, we accept your proposal to advise the Committee of the fact that the Confederated Salish and Kootenai Tribes have substantial concerns with the present language, that the hearing proceed with that information being made of record by you, and that your office request that no further Committee action take place until we have had an opportunity to attempt a compromise.

We have also spoken to Senator Weldon, the bill's sponsor. He is agreeable to this approach.

We look forward to working with you on this matter. Please contact our Legal Department at your earliest convenience to commence this process.

Sincerely,

Rhonda R. Swaney
Acting Chairman

cc: Senator Weldon

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2-2-95
BILL NO. SB 189

SB 189

Testimony of the Department of Justice
February 2, 1995
Prepared by Brenda Nordlund

I will address both aspects of this bill.

STATE-TRIBAL ENFORCEMENT OF IMPLIED CONSENT LAWS

It has been the Montana Department of Justice's policy to process licenses of tribal members seized by tribal law enforcement officials under tribal implied consent ordinances and forwarded to the Department as if those licenses had been seized under Mont. Code Ann. § 61-8-402. That section generally provides that, if a driver reasonably believed to be operating a motor vehicle under the influence of alcohol or drugs refuses to consent to administration of a blood, breath or urine test, a law enforcement officer must seize the driver's license and send it to the Department. The driver's privilege to operate a motor vehicle is suspended automatically for 90 days after a first refusal or, following a second or subsequent refusal within five years of a previous refusal, for one year. When the suspension is completed, the driver may request reinstatement of his license upon payment of a $100 fee.

Last summer the Department was required to reassess its policy in response to a demand by a tribal member for return of his license without payment of the fee. We concluded that licenses seized under the authority of tribal ordinances cannot be deemed to have been seized under § 61-8-402 as that provision is now drafted. We also concluded, however, that this issue could be addressed through an amendment to § 61-8-402 and entry

into state-tribal cooperative agreements under Mont. Code An.. §§ 18-11-101 to 61-8-402. We communicated our conclusions to each of the chairs of the Indian tribes in a letter dated September 7, 1994.

It is only in recent days that the Department was advised of concerns of the Confederated Salish-Kootenai Tribes of the Flathead Nation (C S-K T) regarding the manner in which this bill was drafted. We have exchanged possible amendments with the Legal Department of the C S-K T in an attempt to address their concerns. The Department is willing to continue to work with the C S-K T, and to that end, late yesterday afternoon an agreement was reached with the C S-K T that the hearing today proceed, but that we would ask that no further Committee action be taken until we have had an opportunity to reach a compromise.

This agreement is memorialized in a letter from Rhonda R. Swaney, acting Chairman and Vice Chairman of the Confederated Salish and Kootenai Tribes of the Flathead Nation, a copy of which will be distributed to committee members by the committee secretary.

The Department wants to work things out with the C S-K T, but in so doing, we don't want to create problems with other tribes. The state-tribal government aspects of this bill must be broad enough to work for all parties, and the DOJ is committed to do whatever to resolve concerns and come up with appropriate amendments that serve the needs of all. And the Department wants to assure the Chairman and members of this committee, that it

EXHIBIT 2
DATE 2-2-95
SB 189

will act with dispatch so as not to hold up the committee action unduly.

PROCEDURAL CHANGES REGARDING NOTICE AND RIGHT TO STAY

Unrelated to the tribal issue, the bill also contains some revisions for the notice to be given drivers under the implied consent statute. These changes are intended to provide drivers with more timely and clearer notice of their rights under the implied consent statute, particularly the right to a hearing. The bill also codifies the current practice of staying a license suspension or revocation pending hearing. These changes were brought in part in response to a lawsuit filed in 1992 in federal district court that asserted a procedural due process challenge to Montana's implied consent laws. The lawsuit is currently in the process of being dismissed, without a decision on the merits or any admission of constitutional deficiency on the part of the state. Rather than run the risk of a similar challenge in the future, the Department opted to support these procedural changes, which will serve the purpose of providing timely notice of rights to motorists whose license is subject to seizure, suspension or revocation under implied consent laws, while at the same time streamlining the process by having the formal notice served by the arresting officer at the time of arrest, rather than by mail several days later from the Motor Vehicle Division.

SB189

- WOHEHIV -
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043

- WOHEHIV -
The Morning Star

RECEIVED

FEB 0 9 1995

ATTORNEY GENERALS OFFICE
HELENA MONTANA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-2-95
BILL NO. SB 189

-via telefax and first class mail-

February 2, 1995

Ms. Brenda Nordlund
Mt. Dept. of Justice
215 N. Sanders
Box 201401
Helena, Mt. 59620-1401

Dear Brenda and Sara:

The office of Montana Attorney General has inquired on our views about a bill which is now pending before the Montana legislature relating to driver's license suspension, revocation and reinstatements. We have read the proposed changes, especially the new language in which the State will recognize and honor the suspension and revocation that our Judicial System would impose on a driver who refused to take blood, breath or urine tests that would be requested to detect alcohol or drugs in an impaired drivers body.

We support the bill (Senate Bill No. 189) and the amendments through February 2, 1995. Our understanding of this bill is that if our Tribe ever requires the drivers here to have a license and we enact law which would allow our police and judicial system to suspend and revoke an impaired drivers license to drive, then you, in the State, would recognize our decision and see that the license was indeed revoked. Reinstatements made by the Tribe likewise would be respected by Montana. The Tribe and the State would also need a short written memorandum of agreement in place once this enabling State legislation is passed.

We believe this is a step towards the State and Tribal Governments working cooperatively on our joint problems and do support this proposed SB189 as now amended.

Sincerely,

Llevando Fisher

Llevando Fisher, President
Northern Cheyenne Tribal Council

cc: Calvin L. Wilson
Tribal Council Member

Amendments to Senate Bill No. 189
First Reading Copy

For the Committee on Judiciary

Prepared by Brenda Nordlund, Dept. of Justice
Feburary 1, 1994

1. Page 2, lines 22-28
Strike: subsection (7) in its entirety
Insert: (7) The department will (a) suspend or revoke a driver's license seized within the exterior boundaries of a federally recognized Indian reservation in this state by a peace office acting under the authority of a tribal government with jurisdiction over the reservation and (b) recognize a tribal court order reinstating a driver's license if:

(i) the tribal government has adopted an ordinancy substantially similar to this section and 61-5-403; and

(ii) the department and tribal government have entered into a state-tribal cooperative agreement for this purpose in accordance with title 18, chapter 11, part 1.

2. Page 3, line 25:
Insert: "This section does not create a right of appeal to a state court from a driver's license seizure by a peace officer acting under authority of a tribal government or adjudicated by a tribal court pursuant to a cooperative agreement under subsection (7) of [Section one].

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2-2-95
BILL NO. HB108

HB 108 Testimony

This bill introduced by Representative John Cobb is supported by the Department of Corrections and Human Services (DCHS) Alcohol and Drug abuse Division (ADAD).

DCHS/ADAD would be the agency responsible under 53-24-208 for approving the facilities eligible to provide the dangerous drug information course. We currently develop the standards for the ACT or DUI component, approved programs are required to follow. The department is also the agency given legislative responsibility for certifying chemical dependency counselors who would determine if the individuals taking the course were chemical dependent and need treatment.

We believe programs could merge the persons convicted of dangerous drug misdemeanor into the preexisting DUI curriculum, expand the information course with relative ease and minimal cost. We believe that the successful merge would require extending the lectures by one hour or at the most one session. The assessment and referral process would remain the same.

Respectfully submitted

Darryl L. Bruno, Administrator
Alcohol and Drug Abuse Division
Department of Corrections and Human Services

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-2-95
BILL NO. HB 37

DEPARTMENT OF ADMINISTRATION

RISK MANAGEMENT AND TORT DEFENSE DIVISION

MARC RACICOT, GOVERNOR

1500 EAST SIXTH—LOWER LEVEL
PO BOX 200124

STATE OF MONTANA

TELEPHONE (406) 444-2421
FAX (406) 444-2592

HELENA, MONTANA 59620-0124

February 2, 1995

TESTIMONY IN SUPPORT OF HB 37, by Bill Gianoulias, Chief Defense Counsel, Risk Management and Tort Defense Division, Department of Administration.

The Risk Management and Tort Defense Division requested and supports HB 37. This bill simply provides that people in prison have the same statute of limitations that applies to everyone else.

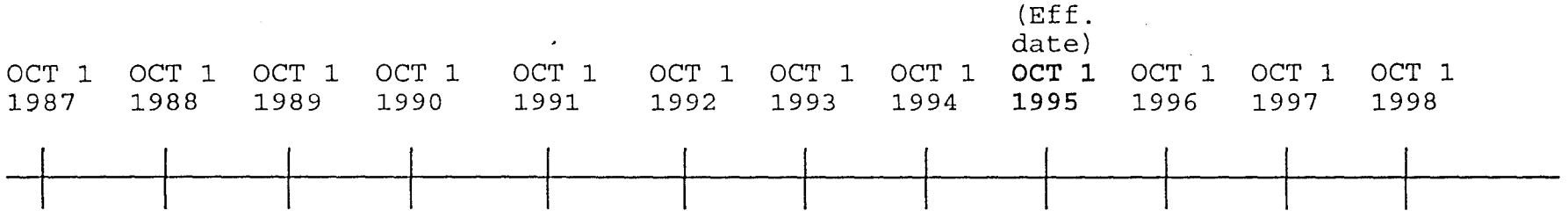
Section 27-2-401 MCA now provides a person imprisoned on a criminal charge, or under a sentence for a term less than life, with up to a five year extension for bringing a lawsuit. If a person in prison has a tort claim to file, instead of a three year statute of limitations, the time period to file a lawsuit is eight years. This amendment will eliminate the five year extension and allow a person in prison three years to file suit, the same amount of time as for everyone else.

While inmates may have had difficulty gaining access to courts in the past, it is not so now. Of 203 open lawsuits we are presently defending, 97 of them have been brought by inmates. Inmates also have access to courts through the Montana Defender Project which is funded by the state and run by the University of Montana Law School. Many inmates have access to computers and access to a law library maintained by the state for the inmates at the prison.

We request that you pass HB 37.

HB 37 EXAMPLE

EXAMPLE ASSUMES TORT ACTION WITH 3 YEAR STATUTE OF LIMITATIONS



<———————— **UNAFFECTED**

Any cause of action arising before 10/1/90 is unaffected by this bill (up to 8 year statute of limitations applies).

———————————————— **3-8 YR. S/L**

Any cause of action arising between 10/1/90 and 10/1/95 has a last date to file of 10/1/98 (statute of limitations is between 3 and up to 8 years).

————————————**>3 YR. S/L**

Any cause of action arising after 10/1/95 (the effective date of this act) has a 3 year statute of limitations.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 2-2-95
BILL NO. SB 13

Amendments to Senate Bill No. 13
Third Reading Copy (blue)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
January 30, 1995

1. Title, line 10.
Following: "VIOLATION;"
Insert: "PROHIBITING INSURANCE PREMIUM INCREASES OR SPECIAL RISK CLASSIFICATIONS BASED ON SUSPENSION OF A DRIVER'S LICENSE FOR FAILURE TO APPEAR OR PAY;"
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 33-16-201 AND"

2. Page 2, line 3.
Following: "restitution."
Insert: "A suspension under this section may not be considered for insurance purposes as a special risk classification under Title 33 or be used as the basis for increasing a person's insurance premiums."

3. Page 2, line 7.
Following: "court."
Insert: "The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days."

4. Page 2, line 8.
Insert: "**Section 2.** Section 33-16-201, MCA, is amended to read:
"**33-16-201. Standards applicable to rates.** The following standards ~~shall~~ apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:
(1) (a) Rates ~~shall~~ may not be excessive or inadequate, as ~~herein~~ defined in this title, ~~nor shall~~ and they may not be unfairly discriminatory.
(b) ~~No~~ A rate ~~shall be held to be~~ is not excessive unless ~~such~~ the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which ~~such~~ the rate is applicable.
(c) ~~No~~ A rate ~~shall be held to be~~ is not inadequate unless ~~such~~ the rate is unreasonably low for the insurance provided and the continued use of ~~such~~ the rate endangers the solvency of the insurer using ~~the same~~ it or unless ~~such~~ the rate is unreasonably low for the insurance provided and the use of ~~such~~ the rate by the insurer using ~~same~~ it has, or if continued will have, the effect of destroying competition or creating a monopoly.
(2) (a) Consideration ~~shall~~ must be given, to the extent applicable, to past and prospective loss experience within and

OVER

outside this state, to ~~revenues~~ revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, ~~deemed~~ considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which ~~such~~ the experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of ~~any such~~ an insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record ~~which~~ that is 3 years old or older or for any driver's license suspension under 61-5-214. ~~Such~~ The classifications and modifications ~~shall~~ apply to all risks under the same or substantially the same circumstances or conditions.""

DATE 2-2-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: 8:30 Exec. Sess: SB 13, 132, 167, 200

Hearing 10 AM: HB 37, HB 108, SB 189, SB 272

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Bill Gravelines	RMTD - Dept of Adm	HB 37	✓	
Dean Roberts	Mtn Bell D.R.in	SB 189	✓	
Brenda Nordlund	Dept of Justice	SB 159	✓	
Sarah Bond	11	11	✓	
DARRYL BRUNO	DCHS/ADAD	H B 108	X	
KATHY McGowan	CDPM	108	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **BRUCE D. CRIPPEN, CHAIRMAN**, on February 8, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 83
Executive Action:	SB 218, SB 167, SB 286, SJR 6, SJR 10, SB 149

EXECUTIVE ACTION ON SJR 10

Motion/Vote: **SENATOR AL BISHOP MOVED TO ADOPT THE AMENDMENTS AS CONTAINED IN (EXHIBIT 1).** The **MOTION CARRIED UNANIMOUSLY** on oral vote.

Motion/Vote: **SENATOR BISHOP MOVED THAT SJR DO PASS AS AMENDED.** The **MOTION CARRIED** in a show of hands vote with **SENS. MIKE HALLIGAN, REINY JABS AND LINDA NELSON** voting "no."

EXECUTIVE ACTION ON SB 149

Motion: **SENATOR BISHOP MOVED THAT SB 149 BE AMENDED BY STRIKING SUBSECTION 3, SECTION 1.**

Discussion: **CHAIRMAN BRUCE CRIPPEN** told the committee that the sponsor had agreed to this change because the language was redundant. Also, he would change the title.

Vote: The **MOTION CARRIED** on oral vote, with **SENATOR HALLIGAN** voting "no."

Motion: **SENATOR STEVE DOHERTY MOVED THAT SB 149 BE AMENDED TO DESCRIBE WHAT THE BILL DOES, USING THE WORD "ABOLISH" OR "DISALLOW."**

Motion: **IN A SECOND MOTION, SENATOR BISHOP MOVED THAT SB 149 BE TABLED.**

Discussion: **SENATOR BISHOP** said that it has been revisited many times in court and he did not think they should tamper with it. He feared lawsuits.

SENATOR RIC HOLDEN asked to vote on the bill and to move on.

Vote: By a roll call vote, the **MOTION FAILED** on a 5-5 vote.

Motion: **SENATOR DOHERTY MOVED AN AMENDMENT TO STATE, "ABOLISH THE RIGHTS OF MONTANANS TO FULL LEGAL REDRESS."**

Discussion: **CHAIRMAN CRIPPEN** disagreed with the amendment, finding the language too strident. This compounds the issue, he said.

Motion: **SENATOR HALLIGAN MADE A SUBSTITUTE MOTION TO REPLACE THE WORD, "ABOLISHING" TO "RESTRICTING".**

Discussion: **SENATOR RIC HOLDEN** spoke against both ideas. It would sound nicer, but the effect would be as bad, he said.

Vote: By a roll call vote, the **MOTION FAILED** by 5 to 6.

Motion/Vote: **SENATOR SUE BARTLETT MOVED TO AMEND SB 149 BY STRIKING THE WORD, "WORKMAN'S" AND INSERTING THE WORD, "WORKERS".** The **MOTION CARRIED** unanimously on oral vote.

Discussion: **CHAIRMAN CRIPPEN** said that the problem is the wording. The language on Page 2 does not pertain to the language on the bill.

Valencia Lane stated that notice needed to be given to people who are voting on the bill and eventually who will be voting on the

amendment, of what they will be doing and what the effect would be if you take out the words, "this full". This would need to be stated in the title as well as in the for and against clauses, she said.

SENATOR BISHOP asked the committee to imagine what the consternation and confusion would be to the voters on something like just taking two words out of the Constitution? He agreed with **SENATOR DOHERTY** and said they should tell people exactly what they're doing.

SENATOR HALLIGAN said if they were going to tell the truth, the truth would be that they don't need the bill.

Valencia Lane suggested they use the word, "clarify" to amend the Constitution.

CHAIRMAN CRIPPEN decided to consult **SENATOR EMERSON,** the sponsor, before any further proceedings.

EXECUTIVE ACTION ON SB 218

Discussion: **CHAIRMAN CRIPPEN** asked the committee to look at Page 4. He said concern had been raised by the landlords that some of the time periods were in question. He asked **Melissa Case, who represents Montana Peoples' Action,** to speak on the bill. He said he thought they wanted to go back to the 14-day period for late payment. If the renters were late three times in one year, it would be tantamount to non-payment.

Melissa Case said that this was one of the major problems that the landlords had. She did not think they wanted to go from 90 to 30 days.

CHAIRMAN CRIPPEN said that the courts had been viewing this as 90 days, which had not been the legislature's intention two years ago. There were reasons to reduce the time limitations, and non-payment was certainly one of them. They had gone to 15 days for that, he said.

Melissa Case asked if he meant on Sub. B, she asked? He agreed. She said they would be amenable to something like 30 days. She thought 15 days was too short. On Subsection E, it talked about two or more violations in a 12-month period, and she said they would agree to have it remain as is, 90 days. If there was a proposal to decrease it, they would have a problem.

CHAIRMAN CRIPPEN asked about Sub. G., which discusses peaceful conduct. It had been 30 days, and a good argument was made for 14 days, he said. He thought they were in agreement on this subject.

SENATOR LARRY BAER said he would not agree. He asked the committee to read 70-24-422 where it provided for a five-day notice if the tenant is habitual in this type of breach. This would apply if they are renting the trailer and the land; 15 days would be provided if they're only renting the space. He saw a significant problem for the landlord having to wait 90 days to remove a habitual offender. He said it would be an overbearing hardship. He was referring to Line 9, Page 4.

CHAIRMAN CRIPPEN said they were trying to strike a balance. The problems were: 1) late payment of rent and 2) two or more violations within a 12-month period. His recommendation was to leave (e) at 90 days but on (b) to move it down from 90 days to 30 days because if they would not pay, they would be out in 14 days anyway.

SENATOR BAER said he would prefer 30 days in either situation and no more.

CHAIRMAN CRIPPEN said he would oppose that on (e). In a show of hands it was determined to change (b) to 30 days.

Greg Van Horssen said SubSection E., Line 16, regarding 90 days written notice for two or more violations of the same rule, he rearticluated conversation of the previous day and stated their concern in the lengthy period of notice for a repeated rules violator was for the well-being of the community. Peace and quiet is sometimes destroyed by a barking animal of other rules violation. Three months must pass while neighbors put up with the problem. In the interest of peace, needs and wants of the complying members, he suggested modifying this down to 14 days.

CHAIRMAN CRIPPEN said many of those rules would be covered by rules in the court. He said he thought 90 days would be sufficient.

SENATOR BAER said the issue was a contractual obligation where two parties had already agreed to the rules and one party keeps breaching the contract by violating. It would penalize the non-violating party by extending the time period. It would not be equitable, he said.

SENATOR NELSON said she would like a compromise.

It was decided to change Page 4, Line 9, Subsection (b) to 30 days.

Valencia Lane explained the marking on Page 4. Line 12. Where she had 14 days under 422(1), it should be three days, under 422 (3). On Lines 6, 12, 15, 18, 21 and 25 there are words written for clarification for applied time limits. The written-in words are amendments, she said.

Motion/Vote: **SENATOR BISHOP MOVED TO ADOPT THE AMENDMENTS AS**

CONTAINED IN (EXHIBIT 2), Items 10, 11, AND 12. The **MOTION CARRIED** unanimously on oral vote.

EXECUTIVE ACTION ON SB 167

Discussion: **CHAIRMAN CRIPPEN** said the problem with the bill was the listing of specific mandates in the bill. He was concerned that the legislature would interpret the list to be all-inclusive. He thought the sponsor was agreeable to amending this list out. The language on Page 5, Line 3 would read, "federal statutes as accorded in the U.S. Constitution that imposes mandates on state or local governments." The Chairman thought it was broad, but it would give all the discretion to the legislature and the Governor to reject or accept the mandates.

Valencia Lane clarified that the committee was working with the grey bill dated February 1, 1995.

Motion/Vote: **SENATOR HALLIGAN MOVED THE AMENDMENTS ENCOMPASSING ALL OF SUBSECTION 3, PAGE 3, AND INCLUDING LINE 3 OF PAGE 4 TO ELIMINATE THE "LAUNDRY LIST".** The **MOTION CARRIED** unanimously on oral vote.

Valencia Lane explained that there were two sets of amendments. One was requested by the sponsor and prepared by **David Boyer** dated February 2, 1995 which do everything seen in the grey bill.

Motion/Vote: **SENATOR BISHOP MOVED TO ADOPT SENATOR BENEDICT'S AMENDMENTS NUMBER 016702 DATED JANUARY 31 AND TO CHANGE "OBPP" TO "GOVERNOR".** The **MOTION CARRIED** unanimously by oral vote.

SENATOR HALLIGAN said that his understanding of the amendments were that they would drastically reduce the fiscal note of the bill because of the removal of reporting requirements.

Valencia Lane explained that on Pages 14 and 15 of the grey bill, the sponsor's amendments which they had already adopted, struck references to the Legislative Council and the Office of Legislative Fiscal Analyst. She asked permission to strike the definitions if they were not in the bill. It was determined that this would not require a motion. She further questioned Page 4, Lines 12 and 13, the language should read "future mandates" and not just mandates on the date the bill was passed.

Motion/Vote: **SENATOR HOLDEN MOVED THAT THE BILL BE AMENDED ON PAGE 2, LINE 28, FOLLOWING "MANDATES" INSERT "EXISTING ON OR ADOPTED AFTER THE EFFECTIVE DATE OF THIS ACT THAT ARE IMPLEMENTED IN MONTANA."** The **MOTION CARRIED** unanimously on oral vote.

Motion: **SENATOR NELSON MOVED THAT SB 167 DO PASS AS AMENDED.**

Discussion: **SENATOR HALLIGAN** asked **Ms. Lane** for her interpretation under the supremacy clause of the Constitution, were they talking about mandates that would pre-empt state law or just those not under the enumerated power. He was unclear about what federal mandates they were talking about. Pre-empted federal laws may be totally handled by the federal government, but they aren't always paid for, he said.

Ms. Lane said she would have to look at the amended bill before rendering an opinion.

SENATOR JABS said that testimony had indicated that on Page 1, Line 26, the language could be challenged in court. He wondered about the difficulty.

CHAIRMAN CRIPPEN said that anything could be challenged in court, whether or not it would prevail was something else again.

SENATOR NELSON said that this had been an exercise in frustration. She doubted that anyone really knew what was going on with this bill. She said it was not their obligation to clean bills up that were "messed up."

CHAIRMAN CRIPPEN explained that the sponsor would have preferred they pass the bill as it was, but the chairman had preferred to give everyone some input into the bill.

Valencia Lane went over the following amendments as she understood them: 1) **SENATOR BENEDICT'S** amendments which created his February 2 grey bill, 2) stripped the listing of mandates, 3) changed amendments to say, "Governor," instead of "Office of Budget and Program Planning", 4) given her the authority to remove the definition of Legislative Council and Legislative Fiscal Analyst if necessary, and 5) clarified that this should apply to future mandates, not mandates existing.

SENATOR BARTLETT said that some items were unclear, and she intended to vote against the bill because she wanted the opportunity to read a bill that reflects all of the changes made before reaching a final decision. She further requested that should the bill pass the committee, she would like the second reading to be held up after the second reading bill had been available to the public for one full day.

CHAIRMAN CRIPPEN said it was standard procedure. He said they could not accept a grey bill on the floor.

SENATOR BARTLETT said she would like a yellow copy of the bill available for (1) 24-hour period before the second reading debate takes place from the time the printed yellow copy bill reaches the distribution office of the Senate.

CHAIRMAN CRIPPEN said he had no problem with that.

Vote: The **MOTION CARRIED** by a roll call vote, with **SENS. BARTLETT, DOHERTY AND HALLIGAN** voting, "no".

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EXECUTIVE ACTION ON SB 286

Motion: **SENATOR HALLIGAN MOVED THAT SB 286 DO PASS.**

Discussion: **SENATOR HOLDEN** asked **SENATOR HALLIGAN** about a "Sassy" file and he wondered why it was significant.

SENATOR HALLIGAN said that the amendments requested were not appropriate for the case, but rather for paternity cases. The suggestions could not be included under the title, he said.

Vote: The **MOTION CARRIED** unanimously on oral vote.

EXECUTIVE ACTION ON SJR 6

Discussion: **Valencia Lane** explained that **SENATOR BROWN** had passed out two possible amendments, one would clarify that the adoption of this resolution does not constitute an application for a Constitutional Convention. The other was possible amendments to increase the size of the delegation from five to seven. **SENATOR LORENTS GROSFIELD** had asked her to prepare the first amendment. It is numbered sjr0601.avl.

Motion: **SENATOR GROSFIELD MOVED THE AMENDMENT.**

Motion: **SENATOR DOHERTY** said he intended to vote for the amendment, but the comments of **Gary Marbut and Betty Babcock** in this uncharted area would be wise to be remembered. This may give some degree of comfort, he said, but we may well end up with a Constitutional Convention.

SENATOR BAER said he had prepared an amendment, as well, that may be included in a substitute motion, if they wished. He would add as a Subsection 7, "in no way does this resolution express nor imply an intent or desire for its evolution into or instigation of a Constitutional Convention, the convening of which this resolution definitively opposes.

SENATOR BISHOP likes the proposed amendment a lot better, but the drafter should have some liberty to work with it.

CHAIRMAN CRIPPEN read, "the legislature of Montana opposes any possibility of the Conference of States evolving into a federal Constitutional Convention."

SENATOR HALLIGAN said that one of **Mrs. Babcock's** concerns was that the representatives that are sent might be considered as "delegates" and they should make clear participants are not considered delegates in a convention capacity.

Valencia Lane said that they could go ahead with **SENATOR BAER'S** sentence, then added, "the Montana delegation is not authorized to participate in a federal Constitutional Convention."

CHAIRMAN CRIPPEN said they would include that language into the amendments.

Motion/Vote: **SENATOR HALLIGAN MOVED TO ADOPT THE DISCUSSED AMENDMENTS.** The **MOTION CARRIED** unanimously on oral vote.

Discussion: **SENATOR DOHERTY** said the amendments would stipulate that rather than have private corporations underwrite the trips to the Council of the States to discuss changes to the Constitution, state general fund money be used. He said that no one should accept private money for meals, travel, etc.

Vote: The **MOTION CARRIED** on oral vote with **SENATOR HOLDEN** voting, "no."

SENATOR DOHERTY suggested that instead of the president and speaker appointing both members of the delegation from each party, he thought that it would be better perhaps if the president and the minority leader and the speaker and the minority leader get to make the appointments.

SENATOR BARTLETT said that in several instances where there is to be representation by both parties, there are exactly those kinds of provisions, and would support the proposal.

CHAIRMAN CRIPPEN said his suggestion was to have the Committee on Committees do it.

SENATOR HALLIGAN stated that **PRESIDENT BROWN** was going to be acquiescing to him anyway, so he thought he would not oppose the amendment.

SENATOR BAER stated that **PRESIDENT BROWN** had expressed his desire to keep the bill as uniform as possible to remain compatible with other states to eliminate mistakes. He agreed with the amendments but did not think it should be incorporated into the bill.

SENATOR BARTLETT said the amendments just adopted with **SENATOR BAER'S** language included caused this resolution to vary from the model resolution sent out. She agreed uniformity might be desirable, but said the states expressing their own individuality should not flaw the process.

Motion/Vote: **SENATOR DOHERTY MOVED THAT THE APPOINTMENTS BE MADE USING THE STANDARD LANGUAGE WITH THE PRESIDENT AND SPEAKER APPOINTING ONE AND THE MINORITY LEADERS OF EACH HOUSE APPOINTING ONE AS WELL.** The **MOTION CARRIED** unanimously on oral vote. **(EXHIBIT 3)**

Motion/Vote: **SENATOR HALLIGAN MOVED THAT SJR 6 DO PASS.** The **MOTION CARRIED** unanimously on oral vote.

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HEARING ON HB 83

Opening Statement by Sponsor:

REPRESENTATIVE JACK HERRON, House District 77, Kalispell, sponsored HB 83. He said it was a "must" bill, and in his estimation, the most important piece of legislation in the 1995 session. He said that Montana did have a current obscenity law on the books, providing that, "a person commits the offense of obscenity if he purposely or knowingly advertises or otherwise promotes the sale of obscene material, or materials' representative or held out by him to be obscene." He characterized the problem with the old law to be the "him" who is the one who distributes. He told the committee that all HB 83 would do it to bring existing law into conformity with 45 other states with federal obscenity laws and is a document for the local attorneys to use successfully in prosecuting serious sexual crimes. It is important for Montana to conform with the rest of the country because: 1) Obscene material is produced and distributed by organized crime. 2) Organized crime exploits women and children for profit. 3) Profits of obscene material diverted approximately $10 billion into other things like the importation of drugs back into our communities. He said it was the business of government to protect the people. Obscenity and crime have a direct correlation, he said.

REPRESENTATIVE HERRON told the committee that **J. Allan Bradshaw, County Attorney, Granite County,** was unable to appear but sent comments. **(EXHIBIT 4)** He said also included in the packet he submitted are testimony from professional law enforcement officers, victims, psychologists, inmates from the Montana State Prison and others. **(EXHIBIT 4).** There are several other related bills in this session, he said, concerning DNA testing and lifetime supervision for sex offenders, but this bill would deal with prevention. He thought Governor Racicot would support this bill. He said there was some misinformation going around that the bill would do away with people's rights, even their Playboy and Penthouse magazines and art shows. He encouraged the panel's support.

Proponents' Testimony:

Dallas Erickson, President of Montanans Citizens for Decency

through Law, Inc., said the organization he represented was a non-profit, Montana-funded corporation. He read testimony from Page 2 of **(EXHIBIT 4).**

Len Munsel, Executive Director and General Counsel at National Family Legal Foundation in Phoenix, Arizona, represented hundreds of Montanans who requested that he appear to speak to the Constitutionality and the public policy basis for HB 83. He is the co-author of a 350-page manual for prosecutors on how to enforce obscenity laws. He said he had trained thousands of prosecutors around the U.S. on how to enforce the obscenity statutes in those states.

He said there could be no serious debate about the Constitutionality of the bill because it was taken word-for-word from the definitive U.S. Supreme Court decision of Miller vs. California, a decision now 22 years old. Every word of that decision has been challenged again and again by the $10 billion a year organized crime-controlled hardcore industry. There was a substantial body of case law, he said. It is the law in 45 states today. He said the arguments that the statute was vague and overbroad were amazing. He maintained that there was no Constitutional defect in the law.

He said experience had shown that this statute could be both effective and enforceable. There is a higher conviction percentage in obscenity cases than in murder and rape cases. He said they hear of the "chilling effect" on libraries and art, but he asked the committee to examine the laws of other states, and ask themselves if there was art in Utah, California and Idaho?

He said that basically HB 83 would give state prosecutors the same tools to fight the crime industry as the federal prosecutors already have. The federal law, taken from Miller vs. California, is in effect today, in Montana. It is already a felony under the federal law to distribute obscene material. The statutes do not affect libraries or art because there is a specific provision written in by the Supreme Court to protect art. It could not possibly affect an "R"-rated movie, and prosecution would not happen by virtue of the definitions, which are a three part test. The first part is that it must depict specific sex acts defined in the law in a patently offensive manner. Mere nudity is not enough, but must include the camera focusing in on the genital activity occurring. Secondly, the material as a whole has to be intended to appeal to the prurient interest, the shameful morbid interest in sex.

Mr. Munsel spoke about freedom. In the last election, he asked if people had not spoken to legislators asking them to get government out of people's lives. He said, generally, they did, but this particular issue is a crime issue. He used the example of drugs. He said we should not repeal drug laws because they are used by consenting adults and it is not the business of government to interefere in personal freedoms. There is no

mandate for the removal of this kind of legislation, he said. He quoted a survey in which 60 per cent of the respondents said that the breakdown of the family and moral issues in nature were the primary problems facing this country today while 33 per cent said the problems were economic in nature.

Rodney K. Smith, Dean and Professor of Law, University of Montana School of Law, appeared before the committee as a Constitutional lawyer, husband and father. He asked that his views not be attributed to his employer. His testimony, which he submitted and read, supported HB 83 and deemed it enforceable. **(EXHIBIT 5)**

REPRESENTATIVE LOREN SOFT, House District 12, represented Yellowstone Treatment Centers as President and CEO, saying that the organization treated emotionally disturbed children and adolescents. He said he had served this cause for the past 34 years. He supported HB 83 because he believed it accurately represented the majority of the constituents in his district. It represented what he believed to be the heartbeat of citizens across America. The two primary purposes of government, he said, were: 1) to promote justice and 2) to protect its citizenry. All government legislation has moral and ethical ramifications, for example, in stealing the private property of others, murder, how people drive their cars on the highway because it poses a safety danger to other people, and environmental issues. He maintained that legislators should not interfere in matters of private ethics or morality, UNTIL the very moment an adult involves someone else whether an adult or child, that is abusive or degrading in any way, and then the issue is no longer private, rather a social issue. He said the bill would protect women and children from the emotional, physical and sexual abuse perpetrated by the distributors, producers and sellers of hardcore pornography. This is a tough-on-crime issue. 30 years ago he felt the country had experienced a societal desensitization revolution. He said he was sent to the principal's office for spitwads, chewing gum and seeds. Now, he said, it's guns and drugs and sexual assault in the library. In his work in human services as a child care worker in a residential group care facility, he said that 85 per cent of the boys in the program have been physically and sexually abused. Nearly 100 per cent of the girls have abused in the same way, and many are prostitutes. Many times the abuse was caused by members of their family, or extended family. In a number of the cases, he stated that hardcore pornography was evident in the home situation. He said that loss of social consciousness on right and wrong weakens informal social controls and unleashes criminal impulses. He asked the committee to seize the moment on HB 83.

Jim Ramsey, Missoula, spoke in support of the bill. He said he had been a therapist in Missoula for the past 25 years. He said that the bill was not a blue-nosed bill nor an issue of morality, but a bill dealing with health and safety. **Mr. Ramsey** said that he wished the committee could sit in his office or that of Dr. Scolatti, Phd., Clinical Psychologist **(see EXHIBIT 4)** working

with sex offenders. He thought if they could hear their clients, they would have no doubt that this bill was designed to protect people from crimes. He talked about small children "finding" hardcore pornography in homes and he said they become profoundly affected by it, contaminating their minds and rotting their souls. He said it becomes a safety issue in that deviant sexual crimes are performed in close proximity to where the perpetrator has become aroused, perhaps at an adult outlet.
He urged the committee to enact the law that would outlaw illicit pornography.

Jeb Standfill, President, Helena, Montana Stake of the Church of Jesus Christ of Latter-day Saints read written testimony. **(EXHIBIT 6)**

Gary Randall, Senior Pastor of the Florence Baptist Church in Florence Montana, read written testimony. **(EXHIBIT 7)**

REPRESENTATIVE DAN MCGEE, House District 21, Laurel, said that he, too, was a victim. He quoted Ted Bundy, a convicted and executed serial rapist and murderer, "society needs to be protected from itself because there are forces at loose in this country particularly about the violent pornography, where on the one hand, well-meaning, decent people will condemn behavior of Ted Bundy, while they are walking past a magazine rack full of the various kinds of things that sent young kids down the road to become Ted Bundys. . .there are many kids playing in the street today that will be dead tomorrow and the next day, and next month because other young people are reading the kind of things and seeing the kinds of things available in the media today."

REPRESENTATIVE DUANE GRIMES, House District 39, Clancy, spoke for the passage of HB 83. He said a newspaper editorial he had written has been distributed already to the committee. **(CONTAINED IN EXHIBIT 4)** He told the committee that this bill was not only a crime issue, but a money issue. Video stores selling the type of material discussed could make anywhere between $3,000 and $4,000 a month in revenue, which could provide quite an incentive and he hoped it would be part of their decision.

Informational Testimony:

John G. Thomas, Chairman, Montana State Parole Board, gave informational testimony on HB 83. He explained procedures, facts and findings concerning the issue. He said over 400 inmates out of 1,300 were housed at the prison because they had committed a felony sex act. They knew in speaking with the prisoners that they had been very involved in pornography. They require that each sex offender does an educational phase, called Sex Offender Program 2, and then further phases, before parole is considered. The board excludes them from having any pornography in any form whatsoever and violation deems a hearing to review their prisoner status. They do not release inmates until they have a comfort

level to do so and they consider it their responsibility to protect society from the predator nature of many of these men and women. He thought HB 83 was a critical bill, but said their Board did not take a position.

Proponents' Testimony:

Arlette Randash, representing the Eagle Forum as a Family lobbyist, supported HB 83. She read from written testimony. **(EXHIBIT 8)**

Terry Crooks, Libby, represented himself. He presented written testimony. **(EXHIBIT 9)**

Sharon Hoff represented the Montana Catholic Conference and liaison for Montana's two Roman Catholic Bishops. She spoke in favor of HB 83 and read from written testimony. **(EXHIBIT 10)**

David Hemion, representing the Montana Association of Churches, read prepared testimony. **(EXHIBIT 11)**

REPRESENTATIVE PENNY ARNOTT, House District 20, Billings, testified on behalf of HB 83. She felt she was elected to stand tall and straight in favor of decency. She had toured the Montana State Prison in the past week where the director said that they are seeing an increasing number of sexual offenders which concerns the prison officials. She said HB 83 would create measures that would prevent sexual offenses which would greatly outweigh the cost of incarceration.

Betty Hubrich, Missoula, represented herself and her six children. She read from written testimony. **(EXHIBIT 12)**

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Kathleen Holmer, represented herself. She said that she was a volunteer with the Boy Scouts of America program, and that pornography negated everything she did as a volunteer. She presented written testimony. **(EXHIBIT 13)**

Barbara Henry, Great Falls, coordinator of an anti-obscenity group, rose in support of HB 83.

Linda Trout, President of the Ravalli County Citizens for Decency through Law, told the committee that she supported this bill.

Steve Taylor, Great Falls, represented himself and his family. He asked that the committee worked to get rid of the obscenity.

Don Johnson, Missoula, father of six and four foster children, represented them and himself in speaking on behalf of HB 83.

Gary Wayne, Seeley Lake, a pastor working with young people, said he was strongly in favor of HB 83.

Laurie Koutnik, Executive Director of Christian Coalition of Montana, the state's largest advocacy organization with 26,000 households, said her organization strongly supported HB 83 and the intent to crack down on violent crime and victimization of women and children.

Dewey Baker, Stevensville, representing himself, said he strongly supported HB 83.

Winfried Hubrich, husband and father of six, Postmaster of Missoula, Missoula, stood in support of HB 83 and presented written testimony. **(EXHIBIT 14)**

Dan Doyle, Missoula, said he supported the bill.

Danielle Smith, Missoula, mother of eight, said she strongly recommended the passage of HB 83.

Informational Testimony:

Dennis Paxinos, Yellowstone County Attorney, Billings, spoke as neither a proponent nor opponent. He believed county attorneys' function is to advise commissioners, boards and committee such as this committee. He did not wish to talk about what is obscene or of literary or artistic value. He said he was there to shed light, not heat. He said he ran the busiest law office in the State of Montana in the most populated county in Montana. In 1985, he said, they filed 484 felonies. This year they anticipate over 1,000 cases. In 1985 they had 12 professional staff, and in 1995 that remains the same. In 1975 the city of Billings had 101 police officers to police 60,000 people, and in 1993 the population had increased to over 100,000 and they still have 101 officers to police and patrol that area. There is only one city judge in Billings. HB 83 will dictate to every city and town what the standards will be, he said, and he hoped the committee would realize what impact it would have on those communities. He said he was sick of seeing women and children in his office that were the victims of verbal, sexual, mental and physical abuse. He had to explain many times what his office could and could not do because of limited resources. He asked the committee, if they elected to pass this bill, not to merely tell the state prosecutors to, "handle it, handle it," but also to figure out how to "fund it, fund it." He said the bill would be tedious, expensive and time-consuming. He implored the committee to attach a fiscal note to the bill to hire two state officers, two attorneys, a paralegal and a secretary to administer the law.

Opponents' Testimony:

Jeffrey Renz, Missoula, Constitutional lawyer, assistant professor, University of Montana Law School, representing himself, requested that the committee recognize that his remarks are not those of his employer. He presented and read from

written testimony. **(EXHIBIT 15)**

Wayne Hirst, Libby, representing the Alliance on Conservatives for Constitutional Principle, spoke in opposition to HB 83. He said the issue was individual rights and guaranteed the committee that all persons opposing the bill were not necessarily pro-obscenity. He asked how many of the panel were told by constituents that obscenity was the uppermost problem on their minds? He wondered if they should be wasting their time with it. He said it was a big issue for Dallas Erickson and his group and had been an issue with them for years. He said they were told that there were similar laws in 45 states and that this law would destroy pornography, but then why, he asked, WAS there such a big pornography problem everywhere if this had been a success. He said the truth had been misrepresented about the Libby case and urged greater investigation. He said the law was used to intimidate businessmen in Libby, not to eradicate filth. He said the law was used to prosecute **Rob Utah** and all Playboy magazines came off the shelf in Libby in 1988 except in his stores. He felt betrayed by the Republican Party and said he wanted government off his back.

Jacqueline Lenmark, representing the Montanans against Censorship, spoke against HB 83. She said that the organization consisted of a group of bookstore owners, theater owners, video store owners, business owners and librarians who were all concerned about the issue of censorship. She said the issue is also about economic impact. She read and presented testimony as well as a list of the business interests represented, letters from **Jerry Skillman, Deidre McNamer,** and the Billings News. The bulk of the packet, however, contain petitions and signatures of hundreds of people opposing the measure. **(EXHIBIT 16)**

REPRESENTATIVE SHIELL ANDERSON, House District 25, Park and Sweetgrass Counties, spoke in opposition to HB 83. He said he was disgusted by the crimes as described and felt that prosecutors had many laws that already deal with them. He said the measure was painted as a crime bill, but would not change current law. He said they would have no control over what community standards may be in the future. He said he thought it was a wrong logistical approach.

Tim Holmes, professional sculptor, Helena, represented himself in speaking in opposition to HB 83. He read from written testimony. **(EXHIBIT 17)**

Bob Fitzgerald, Helena, performer and artist representative, spoke on behalf of himself, and submitted written testimony. **(EXHIBIT 18)**

Jim Hills, representing himself, rose to oppose the measure before the committee. He said that while the proponents of the bill say it did not involve magazines or art, he could not find evidence of that in the bill, but was left to the discretion of

an average, reasonable adult. He said that could mean anybody. He said it would be a law put into effect today with the blanks left open to fill in tomorrow. He stated that censorship could get out of control, and cited people burning books, then later burning people. He urged the opposition to HB 83.

Mary Sheehey Moe, doctoral student whose specialized area of study included censorship issues, spoke for herself in opposing HB 83. She said the bill had nothing to do with protecting women and children. The real issue was censorship. The supporters said that everyone knew what obscenity was and that art and information would not be censored, yet many local people fought to keep a terribly offensive and extremely informative book out of the library three years ago, she said. She stated that if people really believed in freedom, they would have to surrender their own notions of superior judgement and insist on individual choices for others. She said to buy the argument on obscenity laws a person would have to believe that pornography renders an adult incapable of choice and excuses later reprehensible acts. She said everyone should be responsible for their own acts. She cited alcohol, gambling and guns as examples and they were not banned from adult use. She asked the committee to leave well enough alone and kill the bill.

Tom Harrison represented the Montana Cable Television Association. He said his organization was concerned about the bill and the variables that it contains, such as the "average person." They felt that the jury trial, as mentioned in the bill as, "the solution," was really the problem. Every attack of censorship has to result in a jury trial, he said. He said it was current federal law and could be enforced as it was.

Riley Johnson, spoke in opposition to the bill **on behalf of the Montana Broadcasters Association.** Due to the high tech levels of today's market, he said that enforceability would be in question.

Dione Smith, owner of a theater and video store in Hardin, represented the Montana Chapter of the Video-Software Dealers Association. They were very concerned about the non-specific language and censorship implications. She said the proponents said there were not going after "R" rated movies, but it does not really say that in the bill. She said if she was charged with a crime in her business, it would not make any difference if she were innocent or guilty because she would be broke anyway after going though a trial. She also presented written testimony. **(EXHIBIT 19)**

Russell Lawrence, owner of a Hamilton bookstore, read and presented written testimony. He also submitted a packet of signatures. **(EXHIBIT 20 and 21)**

Samantha Sanchez, appeared on behalf of the Montana Civil Liberties Union. She read the following testimony: **(EXHIBIT 22).**

Bonnie Steel, mother of five, grandmother of five, represented herself in opposing HB 83. She said she was a molestation victim as a child and felt if the perpetrator had had access to softcore pornography it would not have happened. She thought that if sex was put under wraps, more child molestation would occur.

Ron Silvers, a licensed professional counselor in private practice and Vice President-Secretary for the Montana Sex Offender Treatment Association represented himself in the statement of opposition to HB 83. He read from written testimony. **(EXHIBIT 23)**

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Barbara Theroux, bookstore owner from Missoula, urged opposition to HB 83 and presented written testimony. **(EXHIBIT 24)**

Forrest Christian, represented the Montana Internet Cooperative, said it would be impossible for them to provide service if this bill were to pass.

Howard Pukerill, representing the Montana Association of Theater Owners, said they were strongly opposed to the passage of the bill. He also presented written testimony. **(EXHIBIT 25)**

Sally Garrett, Dillon, writer, with over 2 million books in print, said a woman had accused her of writing borderline filth, and under this law, that woman have grounds to make **Ms. Garrett's** life miserable.

Toby Johnson, representing Image Plaza Inc., a high tech communications community providing access, stood in opposition to the bill.

Jim Heckel, Director, Great Falls Public Library and Chair of the Intellectual Freedom Committee of the Montana Library Association assured the committee he was not in the business for the money. He urged opposition to the bill and presented written testimony. **(EXHIBIT 26)**

Michael Lahr, representing the Montana Library Association, said that his organization stands squarely in opposition to HB 83, asked that testimony by **REPRESENTATIVE SHIELL ANDERSON** be given careful consideration.

Ian Steel, video store owner in Helena, urged opposition to HB 83. He presented a collection of signatures. **(EXHIBIT 27)**

Richard Miller, Montana State Librarian, presented written testimony based on his review of the statutes of 22 different states, disputing the testimony of the proponents. **(EXHIBIT 28)**

Debbie Sporich, bookstore owner in Dillon, urged opposition to the bill.

Rick Deady, spoke as an average individual and issued written testimony. **(EXHIBIT 29)**

Verl Clark, Bozeman, represented his film-buying agency which included over 35 independent theater owners. He said they were concerned about the risks and intimidation the law could create for legitimate businesses. He also presented written testimony. **(EXHIBIT 30)**

Bob Campbell opposed HB 83. He said he was the author of Article 2, Section 10, the "right of expression" in the State of Montana codes. He said the first day this bill would go into effect, all adult rights would be terminated and it would allow adults to possess only what children are allowed today to read or view or think. **(EXHIBIT 31)**

Margaret C. Hollow, Helena, mother of three, grandmother of eight, said her family has always had the freedom to choose what they pleased to read or see and assured the committee it had not hurt any of them. **(EXHIBIT 32)**

James Mullan, Billings, represented himself in opposing the bill.

Arlynn Fishbaugh, Executive Director of the Montana Arts Council, said their agency is mandated to uphold artistic expression and freedom of artistic expressions. For that reason, she stood to oppose HB 83, she said.

Charles Walk, represented the 75 members of the Montana Newspaper Association, and requested that the committee read his written testimony. **(EXHIBIT 33)**

Chris Imhoff, representing the League of Women Voters of Montana, said that her organization is opposed to this bill and submitted written testimony. **(EXHIBIT 34)**

Kate Cholewa, on behalf of the Montana Womens' Lobby, said their organization felt the need for protection from this bill and repression, censorship and coercion.

Bob Hollow, Helena, magazine wholesalers, said the bill would cause great concern and submitted written testimony. **(EXHIBIT 35)**

Donald H. Kern, Helena, spoke against the bill and reminded the committee to get out of the private lives of citizens and get on with the business of balancing the budget. He submitted a copy of a letter he had written to a local newspaper. **(EXHIBIT 36)**

Mark Watson, City Administrator for the City of Billings, said they wanted to express their concern for the provisions of the bill and impacts such boards as Parks, Library and City Council.

Gloria Hermanson, representing Montana Cultural Advocacy, a

grass-
roots coalition of people statewide, stood in opposition to the bill.

Don Jenni, Biology professor at the University of Montana and also a teacher of human sexuality, said he believes that the best defense against sex crime is good education. (EXHIBIT 37)

The following letters were also presented to the committee during the hearing in opposition to HB 83

Carlotta Grandstaff, Hamilton (EXHIBIT 38)
Ruth Thorning, Hamilton, Reporter, Ravalli Republic (EXHIBIT 39)
Nicholas Bugosh, Helena (EXHIBIT 40)
A booklet entitled, "Everything you always wanted to know about the movie rating system" (EXHIBIT 41)
Rusty Stu, Hamilton, Montana Association of Theater Owners (MATO) (EXHIBIT 42)
Mike Blakesley, Forsyth, MATO (EXHIBIT 43)
Dan Erving, Helena, MATO and Montana Chapter of Video Software Dealers Association (EXHIBIT 44)
Donna Kilpatrick, Laurel, MATO (EXHIBIT 45)
Stan Smith, Dillon, MATO (EXHIBIT 46)
Ayron Pickerill, Polson, Polson Theaters (EXHIBIT 47)
Dan Klusmann, President, Independent Marketing Edge, Bozeman (EXHIBIT 48)
Lou Archambault, Helena (EXHIBIT 49)
Charles Breth, Helena (EXHIBIT 50)
Bob Worthy, Helena (EXHIBIT 51)
Brenda Brewer (EXHIBIT 52)
The following items were presented after the hearing for inclusion into the minutes:
SENATOR DOHERTY FOR Mary Dykstra, Great Falls (EXHIBIT 53)
Jacqueline T. Lenmark, Esq., collected signatures (EXHIBIT 54)
Sally Garrett Dingley (EXHIBIT 55)
Hennessy's Department Stores (EXHIBIT 56)

Questions From Committee Members and Responses:

SENATOR BISHOP said he was disappointed because after all he had heard, he did not know what was to be considered obscene and what was considered to have artistic merit.

Dennis Paxinos, Yellowstone County Attorney said that the question was really the whole point and the reason why he asked for extra resources if the bill passed. He said the bill would be challenged Constitutionally under the argument of what has artistic merit and what does not. He said the quote by former Supreme Court Justice Potter Stewart who said he "knew it when he saw it," was not an easy standard to apply.

SENATOR DOHERTY quoted REPRESENTATIVE HERRON as saying one of the bill's provisions was to repeal the section that certain motion

picture employees would not be liable for prosecution. He asked why he wanted to do that.

REP. HERRON said the provision was put on by amendment in the House Committee. He said there was some concern that overzealous prosecutors may find someone innocent involved in the transportation of films who had no knowledge of what was in the containers.

SENATOR DOHERTY said he had not heard any explanation of why Montana's current obscenity statute isn't working.

REP. HERRON said that the law enacted in 1972 could have a freight train driven through it. No county attorney or prosecutor could use this law, he said. He pointed to Page 1, Line 21-23 of the Montana Laws, and read, "advertised or otherwise promoted the sales of obscene materials or material represented or held out by him, to be obscene." "Him", he said, is the person proposing the bill. He said if the sponsor would not see the material as obscene, the county attorney would have no options.

SENATOR DOHERTY asked **County Attorney Paxinos** if he had testified that he already had prosecuted people under the statute.

Mr. Paxinos stated that he had prosecuted child pornographers. He said it was a much easier, more quanitifialble, easily-measured type of pornography or obscenity. Once the person crosses to the age of majority, it is difficult to prosecute, he said.

SENATOR DOHERTY asked **Len Munsel** if 45 or 22 other states have adopted this language, could he provide a list of states, when they adopted the rules, and what happened to their sexual violence statistics and occurrences after the adoption? He said the claim was being made that there is a causal correlation between pornography and violence against women and children.

Mr. Munsel said he could certainly do that. He further stated that a number of states indicated that there is a direct correlation between the availability of the material and the sexual abuse rate in that state. He said he would provide a copy of a study in New Hampshire of an analysis of all fifty states. They determined the availability of pornographic materials vs. the rape rates and they statistically found a valid correlation in 43 of 50 states. The 10 states with the highest rape rates were the states with the most pornography available.
Mr. Munsel also responded to **SENATOR DOHERTY'S** inquiry about what is wrong with current statute. The existing statute is not an obscenity statute, he said, because it applies just to children. It also has a requirement with respect to the knowledge of the defendant that is impossible to prove. Under the old statute a prosecutor would have to prove that the materials were sold to a

child knowing the material was obscene. As the Supreme Court pointed out in the Hamling case, that type of requirement is impossible to prove because the defendant would be able to say he was not brushed up on the law. He said it has not been used in 22 years.

SENATOR DOHERTY further questioned **Mr. Munsel** about Constitutional muster under the federal law and the Montana Constitution. **Mr. Munsel** said one of the attorneys on the other side admitted that the bill would pass federal Constitiutional muster. In Oregon and Hawaii, they Supreme Court protected obscene materials. Since that time, the pornographers have challenged every state's Constitution, he said. The states have won 25 cases in a row that have said that the state Constitution does not extend to obscene material.

Bob Campbell, said he was the drafter of the right of privacy and the right of expression. The right of expression is separate, he said. The U.S. Supreme Court has said that this material is legal in anyone's home in this nation. **Mr. Campbell** said that Montana does and can have a higher standard than the minimum found in the U.S. Constitution. The U.S. Constitution does not have the right of privacy, he said, but the Montana Constitution does with a higher standard, he argued. He said that we can protect our people more than the protection that the United States can give us. We have now the right of expression, he said.

SENATOR BARTLETT asked both **Dean Smith and Professor Renz** about the final Subsection on Page 3 of the bill which leaves in the current language that local governments listed may adopt ordinances and resolutions that are more restrictive as to obscenity, and she wanted to know if they would still be Constitutional.

Dean Smith said HB 83 is not as strict as it might be. This would allow for counties to expand and try to test the limits of the Constitutionality in ways that would not be necessary. He said it is clearly Constitutional but they haven't had the Supreme Court decide the precise case here in Montana.

Professor Renz answered that local governments have already adopted ordinances that are more strict than the current state law. He said that three towns in Lincoln County and Lincoln County itself have current ordinances. He said every single county and municipality could possibly adopt a counterpart of HB 83 if they desire to do so.

SENATOR BARTLETT asked if the ones that had adopted stricter ordinances had been upheld as Constitutional.

Professor Renz said that only one was challenged. The first Lincoln County ordinance which, on its face, violated the Miller test. That was not declared unconstitutional because while that

case was pending, the County amended the ordinance to remove the defect.

SENATOR GROSFIELD asked **Professor Renz** if a town could adopt a rule that is less strict than the one on the Montana books?

Professor Renz said that HB 83 would adopt a statewide standard for obscenity rather than a local standard. As a practical matter, he said some communities would probably apply their own values to the decision.

SENATOR GROSFIELD asked **Forrest Christian** about Internet and how this bill would affect them. He said he read a section that said, "delivers or otherwise makes available." He asked him to expand on that.

Forrest Christian responded that Internet provided a connection to a global network. There are any number of topics available, he said, from law to health information. There is also some explicit subject matter. The problem is that while they are aware of the content, they are making it available to the public. If this law passes, they would have to restructure their business.

SENATOR HALLIGAN asked **Professor Renz** about the effectiveness of the current law. He talked about Miller vs. California and other case law, and questioned the knowledge requirement on the part of the defendant.

Professor Renz said that as a defense attorney it would be much easier to prove his clients' innocence than under the proposed bill.

SENATOR HALLIGAN asked if a prosecutor could ever obtain a conviction without a confession?

Professor Renz said that under the old law, it would be a matter of circumstantial evidence. It would require a certain degree of knowledge and it could be proven through activities and warnings by the police or county attorney about the obscene material. That would be sufficient, he said.

CHAIRMAN CRIPPEN asked the sponsor, **REPRESENTATIVE HERRON** about the wording on Page 3, Line 3, "lacking literary or artistic value". The educational people are worried about the discretion on explicit materials, he said. He wondered why the language for "educational materials" wasn't included. He further questioned if the sponsor would object to that inclusion.

REPRESENTATIVE HERRON said he would not object, but expressed some concern about it.

Mr. Munsel answered that the reason it was not there because the language that came from the Supreme Court said, "literary,

artistic, political or scientific value." There are a minority of states, he said, perhaps three or four, that have included "educational" but the majority have not because of the potential for abuse. The hardcore distributors may start distributing the same materials under the guise of education.

CHAIRMAN CRIPPEN asked **Mr. Paxinos** about the bookstore operator who was concerned about his responsibility to know what every book contains and maybe it would be offensive enough that the county attorney would feel compelled to prosecute. He asked if there was a problem with enforcement?

Mr. Paxinos said it was the most important point of the opposition, asking, "where do you draw the line?" He said he would be concerned that the county attorney in one area would be more zealous than others. He wondered what the standard would be in the year 2000?

CHAIRMAN CRIPPEN asked about implied intent.

Mr. Munsel said that the critical element here would be pandering, which is how the material is displayed, and also sexual intent. The Supreme Court has drawn the line for them, he said, and they could go no further. The risk that the statute would be used for R-rated movies, is an unfounded risk, he said. He said there was no risk that the county could go further if they go as far as they can under federal regulations.

CHAIRMAN CRIPPEN asked about bookstore displays. He asked if he could imply intent to that?

Mr. Munsel answered, "no." There would be no pandering of the material for its intended sexual exploitive nature.

Professor Renz replied to the same question by saying there is no intent provision in this bill so it would be a "knowing" standard which is less than intent. The problem would not be that the person would not be convicted, he said, the problem is that there is nothing that will stop the prosecutor from prosecuting.

Closing by Sponsor:

REPRESENTATIVE HERRON thanked the committee for a good hearing and closed on HB 83 without further comment.

{Tape: 3 of 3; Side: A; Approx. Counter: 42.7}

ADJOURNMENT

Adjournment: **CHAIRMAN BRUCE CRIPPEN** adjourned the hearing at 12:45 p.m.

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2-8-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

STANDING COMMITTEE REPORT REQUEST

Committee Judiciary Date 2-8-95

The following committee action occurred on the above date:

Bill/ Resolution Number	Do Pass	Do Not Pass	Concur	Do Not Concur	Consent Calendar	Amend	Amendment File Name
1. SJR 10	☒	☐	☐	☐	☐	☒	
2. SJR 6	☒	☐	☐	☐	☐	☒	
3. SB 167	☒	☐	☐	☐	☐	☒	
4. SB 218	☒	☐	☐	☐	☐	☒	
5. SB 286	☒	☐	☐	☐	☐	☐	
6.	☐	☐	☐	☐	☐	☐	

Committee Secretary Judy Feland Phone 4797 Room # 369

Legislative Staff Researcher Valencia Lane Phone 4025

Amendment Coordinator _____ Date _____ Time _____

Note: **Attach Consent Calendar requests, lists of Gubernatorial appointees, copies of all bill amendments or other special directions to this form.**

F 13

SENATE STANDING COMMITTEE REPORT

February 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJ 10 (first reading copy -- white), respectfully report that SJ 10 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 9.
Following: "CIRCUITS"
Insert: "; AND URGING THE PRESIDENT OF THE UNITED STATES TO PLACE A MONTANA JUDGE ON THE FEDERAL CIRCUIT COURT FOR MONTANA"

2. Page 3, line 17.
Strike: "Congress"
Insert: "the President of the United States"
Following: "on the"
Insert: "federal circuit"

3. Page 3, lines 17 and 18.
Following: "court" on line 17
Strike: remainder of line 17 through "circuit" on line 18
Insert: "for Montana"

4. Page 3, line 22.
Following: "Representatives,"
Insert: "the President of the United States,"

-END-

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJR 6 (first reading copy -- white), respectfully report that SJR 6 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 25.
Following: "represent"
Insert: "and that Montana's participation in The Conference of the States is contingent on private funding not being used for The Conference of the States"

2. Page 3, line 3.
Following: first "Senate,"
Insert: "one"
Following: second "Senate"
Insert: "and one appointed by the Minority Leader of the Senate"

3. Page 3, line 4.
Following: "Representatives,"
Insert: "one"
Following: "House"
Insert: "and one appointed by the Minority Leader of the House"

4. Page 3, line 5.
Following: "President"
Strike: "and"
Insert: ","
Following: "Speaker"
Insert: ", the Minority Leader of the Senate, and the Minority Leader of the House"

5. Page 3, lines 5 and 6.
Following: "designate" on line 5
Strike: remainder of line 5 through "legislators" on line 6
Insert: "one legislator"
Following: "as"
Insert: "an"
Following: "alternate"
Insert: "delegate. The alternate"
Following: "delegates"
Strike: ", not more than one from each party from each house, who"

Amd. Coord.
Sec. of Senate

6. Page 3, line 29.
Following: line 28
Insert: "(7) Adoption of this resolution does not constitute and may not be construed to be an application by the Legislature of Montana for the calling of a federal constitutional convention within the meaning of Article V of the United States Constitution. The Legislature of Montana opposes any possibility of the Conference of the States evolving into a federal constitutional convention. The Montana delegation appointed under this resolution is not authorized to participate in a federal constitutional convention."

-END-

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB 167 (first reading copy -- white), respectfully report that SB 167 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 6.
Following: "MANNER;"
Insert: "PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT;"

2. Page 1, lines 11 and 15.
Strike: "5"
Insert: "8"

3. Page 2, lines 23, 25, and 28.
Strike: "5"
Insert: "8"

4. Page 2, line 28.
Following: "mandates"
Insert: "existing on or adopted after [the effective date of this act] that are"

5. Page 2, line 29.
Following: "legislature"
Insert: "; (h) nothing in [sections 1 through 8] may be construed to create a private cause of action"

6. Page 3, line 1.
Strike: "5"
Insert: "8"

7. Page 3, line 4 through page 4, line 3.
Following: "governments." on line 4
Strike: remainder of line 4 through "103-227." on page 4, line 3

8. Page 4, line 5.
Strike: subsection (3) in its entirety

9. Page 4, lines 26 and 27.
Following: "**5.**" on line 26
Strike: the remainder of line 26 through "**council**" on line 27
Insert: "Requirement for budget recommendation -- reporting on

federal mandates"

10. Page 4, line 27 through page 5, line 22.
Following: "**savings.**" on page 4, line 27
Strike: the remainder of line 27 through "(d)" on page 5, line 22

11. Page 5, lines 23 and 24.
Following: ", the"
Strike: the remainder of line 23 through "committee" on line 24
Insert: "governor"

12. Page 5, line 26.
Following: "intent of"
Strike: "the"
Insert: "applicable"
Following: "federal"
Strike: "statute"
Insert: "statutes"

13. Page 5, line 28.
Strike: "office of budget and program planning and the legislative finance committee"
Insert: "governor"

14. Page 6, line 1.
Strike: "office of budget and program planning"
Insert: "governor"

15. Page 6, lines 2 and 3.
Following: "in" on line 2
Strike: the remainder of line 2 through "committee" on line 3
Insert: "the governor's budget"

16. Page 6, lines 4 through 6.
Strike: subsection (3) in its entirety

17. Page 6, line 8.
Strike: "**Requests for information**"
Insert: "**Information**"

18. Page 6, line 9 through page 7, line 5.
Strike: "(1)" on line 9 through "(3)" on page 7, line 5
Insert: "(1)"

19. Page 7, line 5.
Following: "The"
Strike: "requests for"
Following: "to"

Strike: "this section"
Insert: "[section 5]"

20. Page 7, lines 5 and 6.
Following: "must" on line 5
Strike: the remainder of line 5 through "responses" on line 6

21. Page 7, line 6.
Strike: "staff of the legislative council and the office of legislative fiscal analyst by"
Insert: "governor"

22. Page 7, line 7.
Strike: "October 15, 1995"
Insert: "prior to the governor's preparation of the state budget for the ensuing biennium"
Strike: "staff of the legislative council and the office of legislative fiscal analyst"
Insert: "governor"

23. Page 7.
Following: line 9
Insert: "(2) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the governor may request assistance from the legislative council or its staff, but assistance is at the discretion of the legislative council."

24. Page 7, lines 11 and 12.
Following: "The" on line 11
Strike: the remainder of line 11 through "analyst" on line 12
Insert: "governor"

25. Page 7, lines 12 and 13.
Following: "received" on line 12
Strike: the remainder of line 12 through "prepared" on line 13

26. Page 7, line 13.
Strike: "6"
Insert: "5"
Strike: "jointly"

27. Page 7, lines 14 and 15.
Strike: ", the legislative council, and the legislative finance committee on or before December 1, 1995,"
Insert: "and the legislature meeting in its next regular session"

28. Page 7, lines 16 and 17.

Following: "regarding" on line 16
Strike: the remainder of line 16 through "(i)" on line 17

29. Page 7, line 17.
Strike: "committees"
Insert: "state"

30. Page 7, line 18.
Strike: "or"
Insert: "and"

31. Page 7, lines 19 through 22.
Strike: subsection (ii) in its entirety

32. Page 7, lines 23 and 24.
Strike: "recommended" on line 23 through "analyst" on line 24
Insert: "submitted to the governor"

33. Page 7, lines 24 through 26.
Following: "section"
Strike: the remainder of line 24 through "required" on line 26

34. Page 7, line 29.
Following: "mandate"
Insert: "and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order"

35. Page 7.
Following: line 29
Insert: "NEW SECTION. **Section 8. Legislative review and oversight.** (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of [sections 1 through 8]. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with [sections 1 through 8].

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature."

Renumber: subsequent sections

-END-

SENATE STANDING COMMITTEE REPORT

February 8, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB 218 (first reading copy -- white), respectfully report that SB 218 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 6 and 7.
Following: "TENANT;" on line 6
Strike: remainder of line 6 through "SPACE;" on line 7

2. Title, line 7.
Following: "REVISING"
Strike: "GROUNDS"
Insert: "NOTICE REQUIREMENTS"

3. Title, line 9.
Strike: "70-24-427,"

4. Page 2, lines 19 and 22.
Following: "time."
Insert: "This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home."

5. Page 3, line 1.
Following: "home,"
Strike: "if rent remains unpaid 3 days after the tenant has received"
Following: "~~period~~"
Insert: "period"

6. Page 3, line 2.
Following: "~~is~~"
Strike: ", the landlord may terminate the rental agreement"
Insert: "is"

7. Page 3, lines 2 and 3.
Following: "days" on line 2
Strike: remainder of line 2 through "notice" on line 3

8. Page 3, lines 15 through 29.
Strike: section 3 in its entirety
Renumber: subsequent sections

Amd. Coord.
Sec. of Senate

9. Page 4, line 4.
Following: "70-24-422"
Insert: ", except as specifically provided in this section,"

10. Page 4, line 9.
Following: "70-24-422"
Strike: ";"
Insert: ". For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days."

11. Page 4, line 16.
Following: "rule"
Strike: ";"
Insert: ". For this subsection (1)(e), the notice period referred to in 70-24-422(1) is 60 days."

12. Page 4, line 20.
Following: "premises"
Strike: ","
Insert: ". For this subsection (1)(g), the notice period referred to in 70-24-422(1) is 30 days.
(h)"

13. Page 4, line 22.
Strike: "(h)"
Insert: "(i)"

14. Page 4, line 26.
Strike: "(i)"
Insert: "(j)"
Following: "met"
Strike: "; or"
Insert: ". For this subsection (1)(j), the notice period referred to in 70-24-422(1) is 180 days."

15. Page 4, line 27.
Strike: "(j)"
Insert: "(k)"

16. Page 4, lines 27 and 28.
Following: "~~business~~" on line 27
Strike: remainder of line 27 through "other" on line 28
Insert: "a legitimate business reason"

-END-

SENATE STANDING COMMITTEE REPORT

February 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 286 (first reading copy -- white), respectfully report that SB 286 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

331422SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2-8-95 BILL NO. SJR 10 NUMBER 1

MOTION: Sen. Bishop Moved Amendments - Unanimous - Oral
" " " Bill - Show of hands vote

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT		
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY		
SHARON ESTRADA	✓	
LORENTS GROSFIELD		
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS		✓
LINDA NELSON		✓

SEN:1995
wp:rlclvote.man

5 3

DO PASS A.A.

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2-8-95 BILL NO. SB 149 NUMBER 2

MOTION: Sen. Bishop moved amendments - Halligan NO - oral
Sen. Bishop " TO TABLE.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		/
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN	/	
STEVE DOHERTY	/	
SHARON ESTRADA		/
LORENTS GROSFIELD		
MIKE HALLIGAN	/	
RIC HOLDEN		/
REINY JABS		/
LINDA NELSON	/	

SEN:1995
wp:rlclvote.man

5 5

Motion to table - failed

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2-8-95 BILL NO. 149 NUMBER 3

MOTION:

Sen. Halligan Amendments - replace, "abolishing" to "restricting."

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		/
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN	/	
STEVE DOHERTY	/	
SHARON ESTRADA		/
LORENTS GROSFIELD		/
MIKE HALLIGAN	/	
RIC HOLDEN		/
REINY JABS		/
LINDA NELSON	/	

SEN:1995
wp:rlclvote.man

5 6

MOTION FAILED

(Bill sent back to Senate)

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2-8-95 BILL NO. SB 167 NUMBER 4

MOTION: Sen. Nelson Moved That SB 167 Do Pass As Amended.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER	/	
SUE BARTLETT		/
AL BISHOP, VICE CHAIRMAN	/	
STEVE DOHERTY		/
SHARON ESTRADA	/	
LORENTS GROSFIELD	/	
MIKE HALLIGAN		/
RIC HOLDEN	/	
REINY JABS	/	
LINDA NELSON	/	

SEN:1995
wp:rlclvote.man

8 3

MOTION CARRIES

DPAA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-8-95
BILL NO. SJR 10

SENATE STANDING COMMITTEE REPORT

February 8, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SJ 10 (first reading copy -- white), respectfully report that SJ 10 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 9.
Following: "CIRCUITS"
Insert: "; AND URGING THE PRESIDENT OF THE UNITED STATES TO PLACE A MONTANA JUDGE ON THE FEDERAL CIRCUIT COURT FOR MONTANA"

2. Page 3, line 17.
Strike: "Congress"
Insert: "the President of the United States"
Following: "on the"
Insert: "federal circuit"

3. Page 3, lines 17 and 18.
Following: "court" on line 17
Strike: remainder of line 17 through "circuit" on line 18
Insert: "for Montana"

4. Page 3, line 22.
Following: "Representatives,"
Insert: "the President of the United States,"

-END-

Amd. Coord.
Sec. of Senate

331501SC.SPV

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2-8-95

SENATE STANDING COMMITTEE REPORT re SB 218

February 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 218 (first reading copy -- white), respectfully report that SB 218 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 6 and 7.
Following: "TENANT;" on line 6
Strike: remainder of line 6 through "SPACE;" on line 7

2. Title, line 7.
Following: "REVISING"
Strike: "GROUNDS"
Insert: "NOTICE REQUIREMENTS"

3. Title, line 9.
Strike: "70-24-427,"

4. Page 2, lines 19 and 22.
Following: "time."
Insert: "This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home."

5. Page 3, line 1.
Following: "home,"
Strike: "if rent remains unpaid 3 days after the tenant has received"
Following: "~~period~~"
Insert: "period"

6. Page 3, line 2.
Following: "~~is~~"
Strike: ", the landlord may terminate the rental agreement"
Insert: "is"

7. Page 3, lines 2 and 3.
Following: "days" on line 2
Strike: remainder of line 2 through "notice" on line 3

8. Page 3, lines 15 through 29.
Strike: section 3 in its entirety
Renumber: subsequent sections

Amd. Coord.
Sec. of Senate

331502SC.SRF

9. Page 4, line 4.
Following: "70-24-422"
Insert: ", except as specifically provided in this section,"

10. Page 4, line 9.
Following: "70-24-422"
Strike: ";"
Insert: ". For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days."

11. Page 4, line 16.
Following: "rule"
Strike: ";"
Insert: ". For this subsection (1)(e), the notice period referred to in 70-24-422(1) is 60 days."

12. Page 4, line 20.
Following: "premises"
Strike: ","
Insert: ". For this subsection (1)(g), the notice period referred to in 70-24-422(1) is 30 days.
(h)"

13. Page 4, line 22.
Strike: "(h)"
Insert: "(i)"

14. Page 4, line 26.
Strike: "(i)"
Insert: "(j)"
Following: "met"
Strike: "; or"
Insert: ". For this subsection (1)(j), the notice period referred to in 70-24-422(1) is 180 days."

15. Page 4, line 27.
Strike: "(j)"
Insert: "(k)"

16. Page 4, lines 27 and 28.
Following: "~~business~~" on line 27
Strike: remainder of line 27 through "other" on line 28
Insert: "a legitimate business reason"

-END-

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-8-95
BILL NO. SJR 3

Amendments to Senate Joint Resolution No. 6
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1995

1. Page 2, line 25.
Following: "represent"
Insert: "and that Montana's participation in The Conference of the States is contingent on private funding not being used for The Conference of the States"

2. Page 3, line 3.
Following: first "Senate,"
Insert: "one"
Following: second "Senate"
Insert: "and one appointed by the Minority Leader of the Senate"

3. Page 3, line 4.
Following: "Representatives,"
Insert: "one"
Following: "House"
Insert: "and one appointed by the Minority Leader of the House"

4. Page 3, line 5.
Following: "President"
Strike: "and"
Insert: ","
Following: "Speaker"
Insert: ", the Minority Leader of the Senate, and the Minority Leader of the House"

5. Page 3, lines 5 and 6.
Following: "designate" on line 5
Strike: remainder of line 5 through "legislators" on line 6
Insert: "one legislator"
Following: "as"
Insert: "an"
Following: "alternate"
Insert: "delegate. The alternate"
Following: "delegates"
Strike: ", not more than one from each party from each house, who"

6. Page 3, line 29.
Following: line 28
Insert: "(7) Adoption of this resolution does not constitute and may not be construed to be an application by the Legislature of Montana for the calling of a federal constitutional convention within the meaning of Article V of the United States Constitution. The Legislature of Montana opposes any possibility of the Conference of the States evolving into a federal constitutional convention. The Montana delegation

appointed under this resolution is not authorized to participate in a federal constitutional convention."

EXHIBIT 4
DATE 2-8-95
HB 83

Senate Judiciary Committee Hearing

House Bill 83

Obscenity

February 8, 1995

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

(folder)

EXHIBIT NO. 5
DATE 2-8-95
BILL NO. HB83

TESTIMONY OF RODNEY K. SMITH
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF
HOUSE BILL NO. 83
February 8, 1995

Chairman Crippen and members of the Committee, my name is Rodney K. Smith. I serve as Dean and Professor of Law at The University of Montana School of Law. I am before the Committee today, however, as a constitutional lawyer, a husband and father. My views should not be attributed to my employer.

As one who cares deeply about the First Amendment of the Constitution, I want to emphasize that H.B. 83 is constitutional. It is modeled after decisions rendered by the Supreme Court. It will be upheld, if challenged. Under this legislation, Montanans serving on juries will decide whether material is obscene based on established legal doctrine. I think Montanans should be given this right.

When passed, this bill will be enforceable. Only the most violent and explicit sexual material will be illegal. Playboy will not be obscene; a film focusing on a violent rape in front of a masturbating bystander will be.

In the report of the Attorney General's Commission on Pornography, Frederick Schauer, a respected constitutional lawyer who teaches at The University of Michigan, noted that, "clinical and experimental research" is "virtually unanimous" that "exposure to sexually violent materials has indicated an increase in the

likelihood of aggression," and that there is "a causal relationship between exposure to material of this type and aggressive behavior toward women." If law enforcement focuses on this type of material, as it must, enforcement will not only be possible but will also lead to a decline in the incidence of abuse, rape and violence against women and children. If rape and abuse decline overall, as has been the case in jurisdictions in which such legislation is enforced, law enforcement will experience a net gain in terms of their resources available for dealing with crime.

The major argument raised against this legislation is that its passage would diminish liberty in Montana. This is not true.

Liberty issues arise as to the following categories of individuals: those who profit from the sale of obscene material; those who participate in producing such material; those who consume such material; and, those who are harmed as a consequence of someone else's use of such material. A careful examination of each of these categories will reveal that, on the whole, liberty will be diminished **only** if you fail to adopt H.B. 83.

The liberty of those who profit financially from the widespread sale of obscene material will be diminished with passage of H.B. 83, much as a drugdealer loses income when the sale of illicit drugs is limited. This loss of liberty to make a profit off of the misery of another is minimal when compared to the liberty lost when no limits are placed on the sale, distribution and use of obscene material.

The next group that may lose as a result of adoption of H.B. 83 are those who participate in the production of obscene material.

Producers and participants will suffer financial loss, if they are not permitted to distribute obscene materials. However, given extensive evidence that many participants are coerced into participation in producing such material, often through drugs and brutalization, their liberty will ultimately be enhanced by H.B. 83. Many women who participate in such films are hardly more than children, often runaways, who fall into the grip of the purveyors of obscene material. These young people are robbed of their dignity and their capacity to become expressive -- free -- individuals.

It is not surprising, therefore, that those who argue against H.B. 83, primarily focus on the right of the consumer to entertain himself with obscene material. This freedom must, however, be evaluated in light of evidence of the addictive and harmful nature of obscene material. Research further indicates that the major consumers of such material are young men, ages 12-17. Those young men are still developing their expressive capacity or freedom. For that reason, courts have regularly held that they may be prevented from making certain choices, while a minor. Exposure to obscene material, which has addictive capacity and provides young men with a twisted view of male-female relationships, is precisely the kind of activity that is regulated. We even regulate the use of certain addictive material, or material that may do damage to another, among consenting adults, especially when that material is likely to find its way into the hands of children unless it is regulated. H.B. 83 recognizes reality -- children consume and are harmed by obscene material -- and seeks to regulate that reality in a

sensible manner. To do so increases the capacity of young people to become expressive individuals and thereby increases freedom.

The final category to be considered is that of individuals, largely women and children, harmed by widespread distribution of obscene material. There is much evidence of a strong correlation between exposure to sexually violent or obscene material and acts of violence against women and children. Those who are subjected to such violence lose their freedom in profound ways.

I have a nephew who, as a child, was sexually abused by a neighbor. He still struggles, at great cost, to regain his freedom. Many women have also been victimized, in ways that make it very difficult for them to reclaim even the most rudimentary freedom in their lives. Their freedom outweighs the right of individuals to be titillated by exposure to obscene material. Furthermore, as Canada has already determined, widespread dissemination degrades women in ways that deprive them of equality.

In closing, I plead with you to do the right thing and pass H.B. 83. Freedom will be enhanced and much harm will be avoided, with adoption of this bill.

Thank you.

Stanford

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 2-6-95
SB. NO. HB83

MONTANA PORNOGRAPHY TESTIMONY

Over the years leaders of The Church of Jesus Christ of Latter-day Saints have repeatedly warned in plainest terms of the growing deluge of pornographic material that is pouring across the world with increasing momentum and devastating impact. Its pervasive, immoral, and destructive influence is felt in the media, the workplace, conversations, social activities, and homes in every land. Pornography is so insidious it is difficult to assess the negative impact it has upon each one of us, our families, and our communities.

Because of the additive nature of pornography, social scientists tell us that at first one may simply tolerate its existence, then unconsciously come to accept it until moral feelings become desensitized, no longer outraged at its content. Pornography is a poison to the mind and spirit, ruining the lives and homes of innocent men, women, and children. It is not a victimless crime. It degrades and exploits in a most ugly and corrupt fashion. Pornography is utterly without redeeming social value and it is sad that decent people are thrown into this filthy arena of mental and spiritual pollution. While pornography is a moral issue, it is also an issue of survival - survival for the individual, the family, and the nation.

The counsel and warnings from our leaders concerning these sordid elements have been clear and consistent. Members of our Church are urged to not only resist the widespread plague of pornography, but to join with others of good will to support efforts to adopt reasonable and constitutional laws and regulations to reduce and remove the corrupting influence of pornography from our society. We call upon lawmakers to be aware of the dangers posed by the production and distribution of obscene and pornographic materials, under whatever guise, and to stand in defense of those virtues which, when practiced in the past, made men and women and nations strong and free.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2-8-95
BILL NO. HB 83

Senate Judiciary Committee
Honorable Senator Bruce Crippen, Chairman

Mr. Chairman, my name is **Gary Randall**. I am the Senior Pastor of Florence Baptist Church in Florence Montana.

I would like to thank you and your committee for your time this morning concerning this very important piece of legislation, **House Bill 83**.

I stand before you this morning representing a large congregation of people who are very much concerned about the spread of obscene materials, and the harm these materials are causing.

I also stand before you this morning as a victim. When I was 7 years old I was introduced to hard core pornography by an older friend whose Father had a large and varied collection of these magazines. What began as two young boys looking at the ***"girlie magazines"*** led me into years of misery, desensitizing and the total distortion of what was right and wrong.

Sex was portrayed to me as just a physical relationship without love. **Vulgar language** was used to articulate every nasty idea possible. Incest and sodomy was depicted as being OK, with magazines devoted entirely to sex between family members. During this same time my Father was sexually abusing me, an abuse which lasted until I was 11 years old. I remember being paralyzed to resist him because the images that were already in my mind, somehow justifiably said to me *"this was the way it was suppose to be"* even though deep inside it didn't seem right.

As the years went on, and even after I was married my own collection of hard core porn grew. I was ashamed of it, and kept it hidden as most do, but, on a daily basis what I viewed distorted and desensitized my whole way of thinking concerning **sex and women**. I learned there was nothing criminal about **Rape,** after all in reality everyone knew that **"NO"** was really just a game of ***"Hard to get"*** and that what she really meant was **"YES."**

This way of thinking was a reality to me, and **came about by what I saw and read and experienced first hand!** Sadly there was nobody there for me. Now as a Father and Grandfather, I am very concerned, that even in light of my story and the stories of many others who are victims, we may still have so little regard for the protection of the minds and lives of our next generation, that we have to discuss and debate the issue of obscenity **as if it really had some kind of value in our society,**

As a victim, I ask the you **Mr. Chairman**: ***"Will obscenity make our young people coming up better citizens?" "Will it make the family and home stronger?"*** When it has destroyed my childhood and left me a scarred victim, I feel compelled to ask ***"in what way does obscenity benefit our society?"***

Mr. Chairman, some will argue that ***"You cannot legislate Morality, what's right for you may not be right for me."***

The word *"Morality"* by Webster's definition means ***"Rules of right conduct."*** Rules of right conduct are reflected in the laws of our land which are made and passed by our elected Law Makers.

Every single Law we have sets a Moral standard for judging Right and Wrong conduct for the citizens of Montana. They are there for the improvement of our State, and the protection of it's people. Everyone of us ultimately then, makes a moral decision to obey or disobey the law.

Some will argue Mr. Chairman, that State Law Enforcement Agencies and the Court System are already over-burdened, and could not possibly enforce these new laws. **I appreciate** this concern, because we have some officers which attend regularly at Florence Baptist Church. **I must state however,** that the Laws of our land are not, and should not be made on the basis of the ability to enforcement them.

If they were made on that basis, **we would have to legalize** Drugs, D.U.I., Speeding, Robbery and a whole host of other crimes simply because far more get away then ever get caught, and **there will never be enough Law enforcement Officers to catch them all.**

Lastly Mr. Chairman, some will stand before you and argue that **House Bill 83** constitutes **"Censorship"** and a destroying of the **1st Amendment to the Constitution.**

The word ***"Censorship"*** is defined as the ***"choice of something right over something that is wrong."*** But, the question then is asked ***"Who makes that Choice?"***

Strange that it is always the Press and TV Media or in this case Magazine & Video publishers and distributors who scream the loudest about censorship and the 1st Amendment. Is it not the **Editors** and **Station Managers** who decide what you and I will read and see in any Newspaper or magazine or what we will see on TV? Based on what they feel is right, they daily exercise their censoring powers.

Mr. Chairman, the ones who will cry to you about ***"CENSORSHIP"***, are not at all worried about censorship, they are not at all concerned about "Loosing their rights! The whole issue to them is about losing money!

We must remind ourselves that the Freedoms that our **Constitution guarantee**, come with **individual and corporate responsibility**. And it is the exercise of this responsibility with regard to the whole of our State, that ensures all of us that our freedoms will remain intact, and not perverted nor eliminated.

Many States have already enacted similar Legislation into law to prevent future victims. Had legislation such as **H.B. 83** been in place when I was a young man, I would not stand before you this morning as a victim. It is time to do something to protect our children and grandchildren from becoming victims also.

Respectfully Yours,

Pastor Gary L. Randall
5431 Old Highway 93
Florence, MT 59833-6539

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2-8-95
BILL NO. HB 83

February 7, 1995

Senate Judiciary / HB 83
Arlette Randash
Eagle Forum

Yesterday I counted at least 7 bills this session that had to do with sex offender crimes and they were introduced from both sides of the aisles. Victims and their families have testified to the horrors they have faced and will live with for the rest of the lives. HB 83 is a bill that will give Montana's laws the teeth to remove obscenity from the market place because Senator Herron has recognized and is willing to go to the root cause. There is a link between obscenity and sexually deviant behavior. U. S. News and World Report in its November 14, 1994 edition reported that a study by Richard Drake, an assistant professor at BYU's College of Nursing, reveals that pornography consumption can be as 'mood-altering' and 'addictive' as narcotics. "For too long health care professionals have buried their heads in the sand with regard to the health risks of porn consumption," says Drake. He said that from the growing body of research, investigators have found that repeated exposure to pornography not only leads men to minimize the evil of sexually assaulting women, but influences females to trivialize rape as well. **"The consensus is that pornography desensitizes all viewers to previously held standards."**

When HB 83 came before House Judiciary I canvassed the video stores to see if I could purchase obscenity. I was shocked at how easy it was and that I found it within blocks of a local primary school. I brought it in a brown paper bag. A lobbyist for the video industry, when asked if what was in the bag by Rep. Molnar said he couldn't tell if it was obscenity or not, a lawyer would be needed. But that lobbyist told me later privately he was surprised I had found that stuff, that when he had quit selling it in his store he had walked away from $50,000 a year clear profit. **Video store owners know exactly what *is* obscenity and what *is not*, I did when I saw it for sale.....and profit is the motive for the huge misinformation campaign waged against the passage of this bill.**

This session I have visited on several occasions with a member of the Montana Parole Board. If sex offender parolees (with at least some if not all sexual offenders) are found in the possession of pornography that is considered a violation of their parole and they are returned to prison. **The Montana Parole Board obviously sees a link between the use of obscenity and sexually deviant behavior.**

This bill is solid constitutionally, it is good public health, and good public policy. Cut through the hysteria and vote for the innocent little boy and girl who live down the street from you. Give a 'do pass' to HB 83.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2-6-95
BILL NO. HB 63

Terry Crooks
662 Cherry Creek Rd.
Libby, Montana 59923
February 8, 1995

To the Senate Judiciary Committee and Senator Bruce Crippen:

Having been a resident of Lincoln County for more than twenty-two years, I have experienced the county before and since the passing of our obscenity law.

Before the law was passed, the opposition to this law presented arguments focused on the uneducated. They used paranoia and hysteria to convince people that if our law was passed we would have some type of communist police state. Our citizens were warned that our libraries would come under attack and that classic books such as Huck Finn and The Grapes of Wrath would be removed from the shelves. We were told that the movie theaters would be shut down for showing "R" rated movies and that the swimsuit issue of Sports Illustrated would be illegal to own. Such lies are the only tool those who support the industry of commercial nudity can use to convince an unsuspecting and uneducated population that they have a legitimate case.

In Lincoln County we have the following:

11 libraries	Not one book has been removed from these libraries.
12 video stores	Not one video has been removed from these stores. (R, PG-13, PG, G)
3 movie theaters 1 drive-in	Not one theater has been shut down.

We do have an absence of obscene material in the form of printed material and videos in the community.

Please remember these facts in your consideration of a state obscenity law.

Sincerely,

Terry Crooks

Terry Crooks

Montana Catholic Conference

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 2-6-95
BILL NO. HB83

February 8, 1995

Chairman Crippen, members of the committee, my name is Sharon Hoff representing the Montana Catholic Conference. In that capacity, I act as liaison for Montana's two Roman Catholic Bishops on matters of public policy. The Montana Catholic Conference stands in support of HB-83.

That the Catholic Church is not puritanical, nor prudish, nor philistine is manifest from its age-old patronage of the fine arts, of music, and of literature. The paintings and sculptures of churches of Catholic Europe prove that the Church itself often displays the nude human body in its sacred shrines. Christian literature deals with adult themes in all their misery and glory. Catholic culture includes a rich appreciation of the joys of sex, wine, food, and conviviality as gifts of a good Creator; it is not dualist, Manichean, or Victorian. Therefore, it favors the freedom of artists to exercise their gifts of imagination for the enrichment of human life.

Obscene material, however, is as different from art as prostitution is from romance. Its purpose is not creativity, but profit, making money out of the loneliness and frustration of sex without love. And it is a very big business, one which today more and more permeates our whole society and gives to contemporary life a nastiness and ugliness that is at the very opposite of joy. The Catholic Church opposes obscenity not because it fears human sexuality or wants to take the joy out of life, but because it is an abuse of what is most tender and intimate in human beings.

In his January, 1992 address to the Religious Alliance Against Pornogaphy, (an interreligious group including representatives of the Jewish, Catholic, Greek Orthodox,

Protestant and Morman communities) Pope John Paul II states that "By reducing the body to an instrument for the gratification of the senses, pornography frustrates authentic moral growth and undermines the development of mature and healthy relationships. It leads inexorably to the exploitation of individuals, especially those who are most vulnerable, as is so tragically evident in the case of child pornography."

The young and immature are especially vulnerable and the most likely to be victimized. Obscenity and sadistic violence debase sexuality, corrode human relationships, exploit individuals--especially women and young people--undermine marriage and family life and weaken the moral fiber of society itself. We urge the committee's support of HB-83. Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2-8-95
BILL NO. HB 83

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624
PHONE: (406) 442-5761

WORKING TOGETHER:

American Baptist Churches of the Northwest

Christian Churches of Montana (Disciples of Christ)

Episcopal Church Diocese of Montana

Evangelical Lutheran Church in America Montana Synod

Presbyterian Church (U. S. A.) Glacier Presbytery

Presbyterian Church (U. S. A.) Yellowstone Presbytery

Roman Catholic Diocese of Great Falls - Billings

Roman Catholic Diocese of Helena

United Church of Christ Mt.-N. Wyo. Cont.

United Methodist Church Yellowstone Conference

TESTIMONY OF DAVID HEMION
LEGISLATIVE LIAISON
MONTANA ASSOCIATION OF CHURCHES
HB 83
SENATE JUDICIARY COMMITTEE
FEBRUARY 8, 1995

The Montana Association of Churches represents eight of Montana's largest Christian denominations. These include:

American Baptist Churches of the Northwest
Christian Churches (Disciples of Christ) in Montana
Episcopal Church - Diocese of Montana
Evangelical Lutheran Church in America - Montana Synod
Presbyterian Church (U.S.A.) - Glacier and Yellowstone Presbyteries
Roman Catholic Dioceses of Great Falls/Billings and Helena
United Church of Christ - Montana and Northern Wyoming Conference
United Methodist Church - Yellowstone Conference.

The Montana Association of Churches believes in the dignity of human beings, recognizing that, as Christians, we revere the sacred sexual relations between men and women which we feel to be God-given. We urge the Legislature to resist any interest or influence which will cheapen, degrade or exploit that relationship for any purpose.

For that reason we endorse the enactment of HB 83.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 2-8-95
BILL NO. HB83

TESTIMONY OF BETTE HUBRICH

BEFORE THE SENATE JUDICIARY COMMITTEE

IN SUPPORT OF

HOUSE BILL NO. 83

February 8, 1995

Chairman Crippen and members of the committee, my name is Bette Hubrich. I am a homemaker in Missoula and mother of six children. I have worked extensively with children and youth in many different capacities at school, PTA, church, sports, and community activities.

I am frustrated that House Bill 83 has at times been misrepresented and therefore misunderstood. I believe that significant issues have been pushed aside by those who choose to mislead.

The purpose of the bill is to stem the creation, distribution, and consumption of destructive obscenity in Montana. At the present time Montana is one of only five states where the citizens are not protected by an enforcable anti-obscenity law. I feel we should have the same rights as the citizens of the other 45 states.

The Supreme Court has stated in the Miller v. California case, "This much has been categorically settled by the United States Supreme Court, that obscene material is unprotected by the First Amendment." And in Roth v.U.S.,

the Supreme Court said, "We hold that obscenity is not within the area of constitutionally protected speech and press." This means that passage of this bill is constitutional and is not an infringment of our First Admendment rights.

I am aware that there are many voices speaking to you and sometimes yelling at you about this issue. I believe it is critical for you to decide where these voices are coming from and what their motives are. I feel that many of those who oppose this bill have a financial interest in the success and proliferation of obscenity. The FBI estimates that the pornography industry earns eight to ten billion dollars a year. We can therefore say that there is an "obscene" amount of money to be made in this business. What do myself and others want who support this bill and are working for it's passage? We want peace and freedom from fear in our communities.

As woman and a mother. I am frightened when I learn in the 1988 Department of Justice Report that one in three females and one in seven males will be molested. I was the victim of sexual abuse as a child and know first hand how devastating it can be. The effects of being molested go on for years and years. You can forgive but you never forget. I want none of this for my own little ones or yours.

EXHIBIT 12
DATE 2-8-95
HB 83

Obscenity harms us all. When extreme and repeated violence against men, women, and children is termed entertainment and becomes acceptable in our communities we all are at risk. The 1986 Attorney General's Commission on Pornography reviewed a great volume of clinical evidence and concluded unanimously that "substantial exposure to sexually violent material...bears a causal relationship to anti-social acts of sexual violence...". We all need to know that 86% of rapists admit regular use of pornography with 57% admitting actual imitation of pornographic scenes in commission of sex crimes. Also, 87% of molesters of girls and 77% of the molesters of boys admitted to regular use of hard-core pornography. (Dr. William Marshall, 1988)

We have heard a lot about sexual harassment and know what a serious crime this can be. But how can we expect to eliminate sexual harassment in the "workroom" if we allow it to be openly taught by videos and magazines in the "back room"? It is incongruous for us to think we can deal seriously with sexual harassment issues when we will accept depiction of every kind of torture and abuse as a right of free speech.

There are so many aspects of this bill that can and I'm sure will be debated but I believe the bottom line is that your job as legislators is to protect the public interest of the citizens of this state and there is nothing that can be found to be redeeming or valuable about obscenity. It is

not in the best interest of the public to let it go unchecked.

I was touched recently to hear both our Governor and our President speak strongly in support of our families and the importance of caring for our children. And I admire our legislators who can follow their lead and demonstrate that they know obscenity is about violence, degradation, and abuse. These are not natural Montana traits. Please pass HB 83 and say simply "enough is enough". Thank you.

Betty Hubsmith

EXHIBIT NO. 13
DATE 2-8-95
BILL NO. HB 83

My name is Kathleen Holmer. I am writing this in support of House Bill 83 that you are considering in your committee today.

I am a native of Montana, born and raised in the Great Falls area. I graduated from the University of Montana with a B.A. degree and secondary school teaching certification. With the exception of the time I spent in Viet Nam working for the American Red Cross and the time my husband and I lived in other states during his military service, I have spent my entire life in Montana. I love this state and would not choose to live elsewhere. However, the Montana I grew up in was a much safer place than the one I have raised my three sons in. I plead with you to make it safer for my future grandchildren.

By choice I have chosen to be a full time wife and mother to our three sons, who range in age from 14 to 21. I have, however, also dedicated much of my life to the education of children by teaching children in The Church of Jesus Christ of Latter Day Saints and as a volunteer in many capacities for the Boy Scouts of America. For the past 85 years the Boy Scouts of America had been indisputably one of the most effective educators of our nation's youth.

It is as a result of my involvement with Boy Scouts of America that I have become aware of the issues you are dealing with today. In 1988, Boy Scouts of America established a Youth Protection Program to combat the evils of child abuse. This program involved an extensive strategy to prevent access by abusers to the youth within the Boy Scouts of America. Cub Scout Day Camp Director in the Bitterroot District it became my responsibility to implement The Youth Protection Program. One of my responsibilities was and continues to be training adult leaders who have contact with boys in the Scouting movement within the Bitterroot District and sometimes on a Council wide basis. It is as a result of this experience that I have become increasingly aware of the connection between obscenity and child abuse. I now also realize it goes much farther than child abuse, but also has a direct connection to rape and a broad spectrum of crime in our society.

I have also become aware that nine of my personal friends are victims of child abuse and that has forced me to become even more involved in the fight to stop this pervasive evil in our society. For me the victims of child abuse have names and faces and I can not turn my back on their pain. Their pain lasts a life time even with extensive counseling from trained professionals. I have seen it rip families apart. It's results are devastating!

Through the Youth Protection Training I have become aware of the connection between obscene material and pedophiles, who are individuals who prefer children as sexual partners.

One pedophile will literally victimize hundreds of children in his lifetime. (About 98% are men.) The more one studies and understands how pedophiles operate, the more one realizes that pornography is a staple in their seduction process. I will not elaborate because this process of seduction is well documented in study after study. Suffice it to say that edophiles are master manipulators and obscenity is one the main tools in that process of manipulation. Children are one of the main victims of pornography.

In actuality the first victims are the participants, i.e. the people used in the production of the material. They are not willing participants, but rather are forced by coercion or are drugged in order to convince them to perform as they do.

The third victims are the consumers of pornography. Because twelve to seventeen year old boys are most vulnerable to this material due to their natural curiosity about sexuality, the pornography industry targets them. If they can addict a young boy, they have a user for a lifetime. Dr. Victor Cline, and expert in this field describes a four step pattern in the addiction process.

> Step 1: Addiction to the material and repeated return to it for sexual excitement.
> Step 2: Escalation and the individual's need for more explicit, deviant and sexually shocking material to achieve same level if sexual stimulation.
> Step 3: Desensitization towards initially gross and shocking material so that, in time, this material becomes acceptable and desirable to the viewer.
> Step 4: Increased tendency to start acting out sexual activities seen in pornography, fantasy is no longer sufficient to arouse.

This group, in addition to children in general, is of special interest to me because this is the age of boys that I have dedicated much of my life to teaching the values of the Scouting movement. Obscenity would negate everything we try to teach a boy. Addiction to this material destroys character rather than building it.

Since young boys are victims of pornography, it follows that those they associate with the most will also become victims. Those associates are the young girls they date, as well as some of the boys they associate with. Statistics show that one in three girls and one in seven boys will be the victim of sexual abuse before the age of eighteen. Date rape contributes significantly to those statistics. Incest at the hands of siblings, as well adult relatives, is another contributing factor. So far the victims of pornography include young children, the unwilling participants in the industry, teenage

EXHIBIT 13
DATE 2-8-95
HB 83

boys and girls. However, that is not all.

The next victims of pornography are women over the age of eighteen. In this country a recent study showed that 683,000 rapes occur each year. That translates to one rape every 46 seconds. Again, that statistic is incorrect, because not all rapes are reported. Pornography promotes the rape myth, which teaches that women enjoy being raped. Another study conducted showed that 86% of rapists in the study admitted to regular use of pornography and 57% admitted to imitating pornographic scenes in the commission of their crimes. Women are clearly victims of pornography.

Lastly, as if these victims aren't sufficient, I would contend that we are all victims of pornography, because there is a proven connection between pornography and all forms of crime. Where these materials are available, crime rates increase. That may be due to its connection to organized crime, since it ranks third as a money producer for the mob, after drugs and gambling. When we allow pornography to exist in our communities, we invite organized crime along with it.

In this statement I have sometimes used the term pornography, rather that obscenity, but obscenity is actually the worst form of pornography. As long as the evils of pornography are allowed to exist in our society, no one is truly free from fear. I implore you to pass House Bill 83 and help Montana become a safer and freer place in which to dwell and raise future generations.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 2-8-95
BILL NO. HB 83

TESTIMONY OF WINFRIED H. HUBRICH

FOR THE SENATE JUDICIARY COMMITTEE

IN SUPPORT OF HB 83

FEBRUARY 8, 1995

DEAR CHAIRMAN CRIPPEN, AND MEMBERS OF THE COMMITTEE. MY NAME IS WINFRIED (WYNN) H. HUBRICH. I AM THE POSTMASTER OF MISSOULA, MT AND AM THEREFORE A PUBLIC SERVANT, EMPLOYED BY THE US POSTAL SERVICE. I COME TO YOU TODAY NOT AS THE MISSOULA POSTMASTER BUT AS A HUSBAND, FATHER AND CONCERNED CITIZEN. THE VIEWS THAT I WILL EXPRESS ARE MINE, AND SHOULD NOT BE ATTRIBUTED TO MY EMPLOYER.

AS A POSTMASTER, I GET INVOLVED IN THE FIGHT AGAINST PORNOGRAPHY AND OBSCENITY WHEN THE US MAIL IS ILLEGALLY USED. WE HAVE STRICT MAILING REGULATIONS THAT PROHIBIT THE USE OF THE US MAIL TO DISTRIBUTE OBSCENE MATERIAL. I GET COMPLAINTS FROM MY OWN CUSTOMERS WHO SOMEHOW END UP ON MAILING LISTS AND RECEIVE UNSOLICITED SEXUALLY ORIENTED MATERIALS. I HAVE PERSONALLY SEEN SOME OF THIS MATERIAL AND AM ALARMED AT THE PRODUCTION AND DISTRIBUTION OF SUCH MATERIAL.

BUT IT IS NOT THE MAIL OR POSTAL REGULATIONS AGAINST OBSCENITY THAT I WANT TO DISCUSS TODAY. I ATTENDED THE HOUSE SESSION WHEN HB 83 WAS DISCUSSED, DEBATED AND VOTED UPON. OF MAJOR CONCERN IN THAT DISCUSSION WAS THAT THIS BILL WOULD VIOLATE OUR FIRST AMENDMENT

RIGHTS; AND THAT OUR FREEDOM OF SPEECH WILL BE TAKEN AWAY. THAT IS OF GREAT CONCERN TO ME ALSO; BECAUSE I WAS BORN IN NAZI GERMANY AND LIVED BEHIND THE IRON CURTAIN IN EAST GERMANY. BOTH OF THOSE GOVERNMENTS DID CURB THE FREEDOM OF SPEECH. COMMUNISTS RULED AND FREEDOMS WERE LIMITED. I CAME TO THIS COUNTRY WITH MY PARENTS AND HAVE ADOPTED THE CONSTITUTION AND THE BILL OF RIGHTS AS OUR WAY OF LIFE.

IN MY RESEARCH I FOUND THAT THE SUPREME COURT OF THE UNITED STATES HAS STATED IN THE MILLER VS. CALIFORNIA "THIS MUCH HAS BEEN CATEGORICALLY SETTLED BY THE US SUPREME COURT, THAT OBSCENE MATERIAL IS UNPROTECTED BY THE FIRST AMENDMENT." AND IN ROTH VS. UNITED STATES THE SUPREME COURT SAID, "WE HOLD THAT OBSCENITY IS NOT WITHIN THE AREA OF CONSTITUTIONALLY PROTECTED SPEECH AND PRESS."

THIS TO ME CLEARS UP ANY ARGUMENT THAT CONTINUES TO COME UP THAT HB 83 INFRINGES ON OUR FREEDOM OF SPEECH.

I ASK EACH OF YOU TO CONSIDER THE MOTIVES OF THOSE INDIVIDUALS WHO CONTINUE TO PRODUCE, DISTRIBUTE AND SELL OBSCENE MATERIAL. IT IS NOT FOR THE HEALTH, WELFARE OR GOOD OF THE PUBLIC. I URGE YOU TO PASS HB 83 AND BRING IT INTO LAW.

THANK YOU, Winfried H. Hubrich

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 2-8-95
BILL NO. HB83

TESTIMONY OF JEFFREY T. RENZ
IN OPPOSITION TO HB 83
Before the Senate Judiciary Committee

HOW WILL THIS AFFECT YOUR CONSTITUENTS?

1. **The Prosecution is Worse Than the Conviction**. The supporters of this bill have said that anyone who sells something that has artistic merit, etc. will not need to worry about being convicted. If convicted, they don't need to worry, because undoubtedly their conviction will be overturned. Mark Mozer has claimed that magazines showing run of the mill sex acts won't be covered by this law, but that the law only goes after the "really hard core stuff." These people are liars or they are naive.

Don't kid yourself, this bill won't be used to prosecute "hard core" porno kings. It won't be used against greasy haired mobsters. It will be used, and it has been used, to go after your next door neighbor, who runs a convenience store, or your theater manager, or your brother-in-law who runs a video store. Imagine your farm hand's reaction when he's driving your stock truck in from Williston and he's charged with a felony because his friends in Sidney asked him to pick up some Playboys. Imagine your surprise, if you knew it was going on, when you're charged, too.

What will the manager of the Alberta Bair Theater think when she has the opportunity to bring the acclaimed musicals Oh Calcutta! or Hair, both of which have nude scenes, to Billings? Will she decide not to, because of the risk of a felony trial, as theater operators in Boise did? Think about what the Alberta Bair Theater staff decided when Oh Calcutta! did come to Billings. Even though Oh Calcutta! had been found not obscene in every prosecution brought against it, the Theater's managers decided not to sell wine during intermissions to avoid the risk of prosecution under Billings' ordinance, which bans obscene performances in places that serve alcoholic beverages.

Think about Rob Uithof, who owns a gas station and convenience store in Libby. Rob faced four years in jail just for selling magazines under a Lincoln County ordinance like this one. He was acquitted by a Lincoln County jury. Not only was he acquitted, the jury broke out laughing when they reviewed the magazines that had been seized from his store. But later Rob took magazines off of his shelves. Why? Because the County Attorney swore that he would bring another prosecution and another until he found a jury that would convict Rob--for the same magazines for which the jury had freed him. Put your self in Rob's shoes. Rob has a wife and kids. What do you tell your family when they ask, "Are you a criminal? Why is your name in the paper? Are you going to jail?" What does Rob tell his customers? Can their kids keep coming to his store to buy candy as they have for the past 20 years?

Is it no wonder that Rob took those magazines, those **legal** magazines off his shelves? That's the pernicious effect of this bill. People modify their behaviour out of fear of prosecution, not out of confidence of acquittal and not out of confidence in an appeals court.

No one who says they care about people will give the government the power to do

this.

2. **You Can't Control It After It Leaves Here**. You all have in your mind's eye the kind of junk that this bill will prohibit. Forget it. The bill will prohibit whatever local cops, local prosecutors, and local censors want to prohibit. We have 56 counties in this state. Each county has one or more prosecutors. Add the city prosecutors to that list. Can you control them after this bill leaves here? Can you control the cop, who out of his religious convictions, feels that an otherwise legal magazine ought to come off the shelf? Can you prevent Dallas Erickson from doing what he did to Rob Uithof--pressuring the County Attorney to prosecute him for selling magazines deemed legal by a jury? Can you stop the guy who picketed Oh Calcutta! in Billings from doing the same thing? Can you be sure that, out of the hundreds of county and city prosecutors, there won't be one who acts on their personal view of literature, or two who have political ambitions, or another whose family was a competitor of the defendant, as in Lincoln County?

3. **You Can't Control the Jury**. I defended Rob Uithof in the Lincoln County trial. His freedom did not depend upon the kind of magazines he sold. His freedom depended upon the right mix of people on his jury. Another jury, drawn from the same pool of residents, might have convicted him. Why is this? Why is it that one jury can find something to be obscene and another jury from the same community can find that it is not? Who among you want to take that risk of selling magazines or videotapes under these circumstances? If you are a lawyer, and the manager of your local Buttreys comes to you and asks if he should continue to sell sexually explicit novels that are on the New York Times best seller list, what will you tell her? That there's "no way that a jury will convict her?" Can you guarantee her that she won't be prosecuted? My advice to her is that her only sure bet is to get rid of the books, even if they are protected by the First Amendment. That's because playing with the community standards test is playing poker without knowing if the game's been rigged.

4. **You Have Constitutional Problems**. Sure, the bill satisfies the tests established by the United States Supreme Court. But that is not the only constitution here. The Oregon Court of Appeals struck down a law like this, concluding that it violated a state right to free expression that is identical to Montana's. *State v. Henry*, The Hawaii Supreme Court struck down a law like this, holding that it violated Hawaii's right to privacy, which is based on our own. *State v. Kam.*

5. **Conclusion**. Montana's experience with pornography laws hasn't been good. This law will make it worse.

PROPOSED ORDINANCE NO. 2 REGARDING PORNOGRAPHY IN LINCOLN COUNTY

EXHIBIT 15
DATE 2-8-95
HB 83

WHEREAS, Section 45-8-201 (5), M.C.A. authorizes the adoption by Lincoln County of an ordinance regarding obscenity which is more restrictive than the existing provisions of State law, and

WHEREAS, the citizens of Lincoln County have the authority to define and regulate materials which they consider to be pornographic,

WHEREAS, the distribution of hard core pornography constitutes a public nuisance and presents a danger to the health, safety and welfare of the citizens of Lincoln County,

NOW, THEREFORE, the following ordinance shall be in full force and effect in all of Lincoln County, Montana.

Hard Core Pornography

A person commits the offense of Distribution of Hard Core Pornography when, with the knowledge of the obscene nature thereof, he purposely or knowingly:

1. Sells, delivers, provides or offers or agrees to sell, deliver or provide any obscene magazine, picture, cartoon, videotape or other representation or embodiment of the obscene.

2. A thing is obscene and designated as hard core pornography if it depicts sexual conduct or sadomasochistic sexual abuse as defined herein.

A. Sadomasochistic sexual abuse is defined as actual or simulated flagellation, rape, torture or other physical or sexual abuse by or upon a person who is nude or partially nude; or he condition of being fettered, bound or otherwise physically restrained for the actual or simulated purpose of sexual gratification or abuse as represented in the context of a sexual relationship, and when taken as a whole, the material, applying contemporary community standards, appeals to the prurient interests in sex; portrays sexually violent conduct in a patently offensive way; and lacks serious literary, artistic, political or scientific value.

B. Sexual conduct means ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons, or a person or persons and an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, denuded genitals, pubic area, perineum, anal region, or, if such person be female, a breast, and which material, taken as a whole, applying contemporary community standards, appeals to the prurient interest in sex, portrays sexual conduct in a patently offensive way and lacks serious literary, artistic, political or scientific value.

3. Prurient means a lascivious, shameful or morbid interest in sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals. Where the material is designed for, or promoted to, a clearly defined deviant sexual group, rather than the public at large, the prurient appeal requirement is satisfied if the dominant theme of the material, taken as a whole, appeals to the prurient interest in sex of the members of that intended deviant group.

4. A person convicted of disseminating hard core pornography shall be fined at least $500.00 but not more than $1000.00, or be imprisoned in the County Jail for a term not to exceed 6 months, or both.

EXHIBIT 15
DATE 2-8-95
HB 83

STATE OF MONTANA)
) ss:
County of Lincoln)

IN THE JUSTICE COURT OF LINCOLN COUNTY, MONTANA

Before Marlene A. Herreid, Justice of the Peace

THE STATE OF MONTANA,)
)
Plaintiff,) No. 5-90-009-001
)
vs.) COMPLAINT
)
ROBERT UITHOFF,)
)
Defendant.

Scott B. Spencer, County Attorney, being duly sworn deposes and says that on or about the 2nd day of November, 1989, in Lincoln County, Montana, the above named Defendant did commit the offense of:

OBSCENITY, 8 Counts, in violation of County Ordinance No. 2 and Section 45-8-201(5), M.C.A.

COUNT I

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine, Forbidden Erotica. The magazine Forbidden Erotica is obscene as defined in County Ordinance No. 2.

COUNT II

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine, Foreplay. The magazine Foreplay is obscene as defined in County Ordinance No. 2.

COUNT III

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine, Cinema Blue. The magazine Cinema Blue is obscene as defined in County Ordinance No. 2.

COUNT IV

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine, Best of High Society. The magazine Best of High Society is obscene as defined in County Ordinance No. 2.

COUNT V

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine, Hot Twosomes. The magazine Hot Twosomes is obscene as defined in County Ordinance No. 2.

COUNT VI

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine Sex Pix. The magazine Sex Pix is obscene as defined in County Ordinance No. 2.

COUNT VII

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine Swank. The magazine Swank is obscene as defined in County Ordinance No. 2.

COUNT VIII

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine Film Scenes. The magazine Film Scenes is obscene as defined in County Ordinance No. 2.

Conviction of each count of OBSCENITY, is punishable by incarceration in the Lincoln County Jail for not more than 6 months, or a fine not less than $500.00 or not more than $1,000.00, or both.

Scott Spencer

Scott B. Spencer

JUSTICE OF THE PEACE
Department No. 1

LINCOLN COUNTY, MONTANA
418 Mineral Avenue
Libby, MT 59923
Telephone: 293-7781

EXHIBIT 15
DATE 2-8-95
HB 83

I, Marlene A. Herreid, a duly elected, qualified and acting Justice of the Peace in and for the County of Lincoln, State of Montana, do hereby certify that the annexed instruments are true and correct copies of: Verdicts in Robert Uithof trial (Sections I-VIII) and I further certify that I have compared said copies with the originals and that they are full, true and correct copies of case number 5-90-009-001.

IN WITNESS WHEREOF, I hereto set my hand this 4th day of May, 19 90.

Marlene A. Herreid

Justice of the Peace in and for the County of Lincoln, State of Montana

I, Janet B.F. Seigel, County Clerk and Recorder in and for the County of Lincoln, State of Montana, do hereby certify that Marlene A. Herreid, whose name is subscribed to the annexed instruments in writing is a Justice of the Peace in and for the County of Lincoln State of Montana, residing at Libby, Montana, duly elected, qualified and acting as such; that her term of office expires on the first Monday in January, A.D., 1991, as shown by the record of this office; that I am well acquainted with this handwriting and verily believe that the signature to the said instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by seal of this office this _____ day of _____ 19_____.

_____

County Clerk and Recorder of Lincoln County, Montana

_____

Deputy Clerk and Recorder

(Seal)

PLAINTIFF'S EXHIBIT #2
DV-90-12

IN JUSTICE COURT OF LINCOLN COUNTY, MONTANA

Before Marlene A. Herreid, Justice of the Peace

THE STATE OF MONTANA, Plaintiff, vs. ROBERT UITHOF, Defendant.	VERDICT

SECTION I

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "X" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Barbe
Foreperson

SECTION II

The charge of OBSCENITY, a misdemeanor

We, the Jury, find the Defendant:
(Place an "X" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Barbe
Foreperson

EXHIBIT 15
DATE 2-8-95
HB 83

SECTION III

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Burke
Foreperson

SECTION IV

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Burke
Foreperson

SECTION V

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Bache
Foreperson

SECTION VI

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Bache
Foreperson

Missoulian
FRIDAY
March 30 1990

Montana Roundup.....B-3

Magazine vendors 1, porn ordinance 0

By JOHN STROMNES
of the Missoulian
and Associated Press

Lincoln County Attorney Scott Spencer said Thursday he'll continue to prosecute suspected sellers of porn in the county, despite the fact that a jury found innocent the first person prosecuted under the 1988 anti-porn ordinance.

On Monday, a five-woman, one-man jury in the Peace Marlene Herreid's court acquitted convenience store owner Robert Uthof on all eight charges of selling eight obscene magazines at his market in November. The charges were misdemeanors.

Titles of the alleged obscene magazines included Swank, Best of High Society and 1989 Porn Stars. They were confiscated by law enforcement officers in November after complaints by local residents, some of whom demonstrated at Uthof's store during Pornography Awareness Week last November.

Uthof was charged with obscenity under a county ordinance enacted by referendum after a child was killed and mutilated by a convicted sex offender in the Libby area a couple of years ago. A similar ordinance brought before voters in neighboring Sanders County was defeated in 1988.

Acquittal in first Lincoln County case won't inhibit enforcement

Billings attorney Jeffrey Renz defended Uthof on behalf of the American Civil Liberties Union.

The magazines, Renz said, were not prominently displayed in the store. They were locked behind plexiglass, and the covers were concealed, except for the titles, he said, and minors were not permitted to view the magazines.

"We argued that the magazines didn't appeal to a prurient interest in sex," Renz said. "The jury agreed. Jurors did not find the magazines to be offensive."

Spencer said he talked with with jurors after the trial, "and I disagree with Mr. Renz's conclusions" about the reason for the verdict.

Spencer refused to elaborate, or to specifically discuss the case.

But, he said, people who sell sexually explicit magazines or videos in Libby still will face criminal prosecution. Presumably that could mean future charges against Uthof, who authorities have said is the only person who sells the material in Lincoln County.

"The issue is not over," Spencer said.

The Lincoln County ordinance says that any material that depicts sexual conduct is potentially pornographic if, by applying community standards, it is found to appeal to prurient interest, is patently offensive or lacks serious artistic, literary or scientific value.

The issue is not as clear-cut as the First Amendment right to free speech, Spencer said. Obscenity and pornography are not protected by the First Amendment.

Legal issues also involve the right to publish and the right to privacy, both of which are protected by Montana statutes or constitutional law, he said.

A civil action filed to challenge the ordinance is still pending in District Court in Libby, and may be heard by Judge Robert Keller this summer, Spencer said. A decision in that case could bring some coherence to Montana law governing obscenity, he said.

Flathead County has an ordinance, but no one has ever been prosecuted under it, and the former Lincoln County attorney criticized it as unenforceable. Missoula County has no ordinance at all governing pornography. Similar recently has been debated by Great Falls and Billings city officials concerned about allegedly obscene books and nude dancing in casinos, respectively.

One anti-porn bill was introduced in the state Legislature in 1989, but died in committee.

EXHIBIT 15
DATE 2-8-95
HB 83

SECTION VII

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Backe
Foreperson

SECTION VIII

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor ____

NOT GUILTY of the offense of OBSCENITY, a misdemeanor X

Dated this 26 day of March, 1990.

Paul Backe
Foreperson

EXHIBIT 15
DATE 2-8-95
HB 83

Juries can be wrong

To the editor:

During my work as a deputy sheriff in Lincoln County I had occasion to confiscate twenty some marijuana plants and when this evidence was presented to a jury they believed the defendants claim that they thought the plants were tomato despite hearing evidence of cultivation.

Even though I believe strongly in the jury system I have on occasion seen juries come in with a mistaken verdict.

In the 1973 landmark decision concerning obscenity the U.S. Supreme Court gave communities the right to set their own standards as to what appeals to the "prurient" (negative or morbid) interest in sex using the standard of the "average person". ACLU type attorneys claim this is an unworkable standard but lawyers that use it find otherwise.

I am proud of the conservative nature of the Lincoln County residents when it comes to the issue of obscene or hard core pornography. I can not believe that the sexually violent and ugly material that the jury examined is within Libby's community standard.

Using an example to illustrate why I feel this I would refer to smoking. Even if I knew that every adult smoked in Lincoln County, smoking would not necessarily be the community standard. The question would be do they want their children to smoke and do they recommend it to their friends?

Doctor James Dobson and many others, including several Clinical Psychologists in Montana, report that the material of the nature that the recent jury reviewed, causes some people to commit sexual violence against others. I pray that there may be an opportunity for another jury to undo the damage and in my opinion the inaccuracy of the last one. Our children, grandchildren and future generations depend on it.

Dallas D. Erickson

INVENTORY OF SEIZED PUBLICATIONS

Name	Qty	Name	Qty
Pocket Fox	3	Penthouse Hot Talk	1
Hustler	6	Letters Uncensored	2
Chic	6	Fox	7
Penthouse	3	Adult Cinema	1
Sex Guide	1	Satin Lace	5
Uncensored Letters	1	T & A	4
Hustler	2	Hot Housewives	6
Penthouse	2	Swank	2
Velvet	1	Hot Lips	6
Hot Lips	2	Erotic Stars	6
Cavalier	5	Gallery	6
Rear Action	2	Fox	3
Erotica	2	High Society	3
Adult Video	7	Nugget	8
Erotica #13	4	Leg Action	4
Gem	1	Adult Video	6
Cheri	3	Film Scenes	8
High Society	2	Wild & Willing Women	6
Fox	6	Cheri	3
Hot Twosomes	5	X Rated Stars	8
Erotic X-Film	4	OUI	8
Titillation	4	Harvey	2
Juggs	3	Club Int'l	2
Swank	3	Best of 40+	1
Celebrity Sleuth	5	Cinema Blue	6
Film Scenes	5	Velvet	3
Genesis Couple	5	High Heeled Women	5
Big Butt Bunanza	4	Live	6
Wild & Willing Women	7	Gent	5
Hot Housewives	3	Cavalier	2
High Heeled Women	3	Max 40+	6
Close Shave	4	Couples	4
Cinema Blue	6	Tit	2
X Rated Stars	1	Hot Twosomes	1
Red Hot Couples	3	Club	4
OUI	5	Bust	4
Live	6	Juggs	1
Sex Partners	4	Gem	1
Club	5	Celebrity Sleuth	1
Hustler	8	Bunanza	6
Hustler	12		
Sex Guide	3		
Deviations	8		
Penthouse Forum	5		
Pocket Fox	5		
Hustler Fantasies	8		
Chic Letters	9		
Turn Ons	8		
Adult Erotica	4		

EXHIBIT F

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 2-6-95
BILL NO. HB 83

Exhibit No. 16 includes 124 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

TESTIMONY OF JACQUELINE LENMARK
ON BEHALF OF
MONTANANS AGAINST CENSORSHIP

I am Jacqueline Lenmark. I am an attorney practicing in Helena, Montana, with the firm of Keller, Reynolds, Drake, Johnson & Gillespie, P.C. I represent, Montanans Against Censorship, a group of Montana business owners who are concerned with censorship and free expression, including book and video store owners and librarians. This group of business owners **opposes HB 83.**

This bill is an attempt to rewrite Montana's obscenity statute to expand its current definitions to include many forms of art, literature, entertainment, and private conduct that are now freely enjoyed by Montana citizens and provide important revenue and business opportunities for Montana.

HB 83 attempts to redefine "obscenity" as well as expand the criminal offense and penalty. The current obscenity statute already prohibits the publication, exhibition, sale, delivery, provision or otherwise making available of "obscene" material to anyone under the age of 18. This proposed legislation removes the language regarding under the age of 18, making the statute applicable to all consenting adults. The proposed legislation also adds "renting" and "importation" to the laundry list of illegal activities and "statues" and "computer transmissions" to the list of obscene material.

HB 83 has potential serious and far-reaching implications for the small business owners in Montana. It places business owners under the threat of prosecution for the sale, rental, purchase, or importation of materials that could be viewed as obscene. The intent of the sponsor may be to target a specific form of material, but as drafted this legislation will affect all stores, television stations, cable companies, and video stores that transmit, sell or rent even PG and R rated movies. It is so far reaching that it could ban the sale, transmission, or rental of such movies as Batman, a PG-13 movie in which persons are shown being physically restrained by a person clad in a "revealing or bizarre costume."

The potential impact to state revenue is staggering. This legislation will discourage movie producers from making movies in Montana, an industry that has brought substantial revenue to Montana in the past. It will also affect television stations and cable companies that will be forced to second guess potential

prosecution under the statute in determining whether to broadcast nationally televised network programming in Montana. Bookstores will be forced to censor the types of books they will provide to their customers, because the bills will prohibit the sale of many of the current best sellers, romance novels, and poetry collections. Plainly construed, which is how a statute should be interpreted, it would even preclude the sale of the Bible. The bill will affect how the bookstore owners choose to display books covering parenting and health issues.

CONSTITUTIONAL CHALLENGE

Apart from the very real impact the bill will have on business, it is subject to constitutional challenges, under US and Montana law.

The proposed bill is unconstitutional under the 1st Amendment to the U.S. Constitution. The First Amendment to the United States Constitution states that "[c]ongress shall make no law . . . abridging the freedom of speech, or of the press . . . ." History shows that the very purpose of the First Amendment is to protect expression that fails to conform to community standards. The Framers of the Constitution believed that the Bill of Rights would protect the rights of the minority against the will of the majority. In this instance a very vocal group of people is attempting to enforce its will on the citizens of Montana through the proposed legislation.

In 1973, the U.S. Supreme Court in Miller v. California, 413 U.S. 15 (1973), set the standard under the First Amendment of the United States Constitution, whereby States could permissibly restrict obscenity. Montana's current obscenity statute reflects those guidelines verbatim. To enact legislation that departs from the enunciated test opens the legislation to serious challenge.

The proposed legislation is unconstitutional under the Montana Constitution. The State of Montana is free to extend to its citizens even greater freedom of speech, or any constitutional protection, that the U.S. Constitution, but not less. Some states have gone as far as to reject the Miller test altogether, finding that "the test constitutes censorship forbidden" by their state constitution. The Montana Supreme Court has yet to address this specific issue, but it is clear that Montana's Constitution affords to Montanans greater freedoms of expression and privacy than the U.S. Constitution.

EXHIBIT 16
DATE 2-8-95
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The Montana Constitution states that "[n]o law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty." Art. II, Sec.7, Mont. Const. Montana is free to choose to extend a greater freedom of speech to its citizens than those guaranteed under the Federal Constitution, and that is exactly what the 1972 framers envisioned.

Delegate Mansfield stated at the convention with regard to Art. II, Sec. 7: "The freedom of speech is extended . . . to cover the freedom of expression. Hopefully this extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken work, and the ways in which one expresses his unique personality,in an effort to rebalance the general backseat status of states in the **safeguarding of civil liberties**. The committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case law." Transcript, Mar. 7, 1972, Mont. Const. Conv., at 1649 [emphasis supplied].

The statement of Delegate Mansfield clearly shows that the framers of the Montana Constitution intended greater freedoms of speech and expression be extended to Montanans through the state constitution than are afforded by the federal constitution. The proposed legislation flies in the face of that intent.

Art. II, Sec. 10 of the Montana Constitution states that "the right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Delegate Campbell in proposing the privacy section stated that: "We all recognize that the state must come into our private lives at some point, but what [the privacy article] says is, don't come into our private lives unless you have a good reason for being there. We feel that this, as a mandate to our government, would cause a complete reexamination and guarantee our individual citizens . . . this very important right--the right to be let alone: and this has been called the most important right of them all." Verbatim Trans. Mt. Const. Conv. (Mar. 7, 1972) at 1681.

To invade our individual privacy then the state must show a compelling state interest. You will be told that interest is shown in the demonstrable link between pornography and crimes against women. As the conflicting testimony to the Committee will demonstrate, however, there is no clear answer on that "link." No clear answer is not sufficient to demonstrate a "compelling state interest."

OTHER STATES' EXPERIENCE

Other states have tested similar legislation under their constitutions and have found it defective.

In 1987, the Oregon Supreme Court struck down a similar statute in State v. Henry, 302 Or. 510, 732 P.2d 9 (1987), holding that the Oregon Constitution gave greater protection to free expression than the U.S. Constitution. Similarly, in 1989, the Colorado Supreme Court struck down Colorado's obscenity statute on the same grounds. People v. Ford, ___ Colo. ___, 773 P.2d 1059 (1989).

Supporters of the obscenity law in both states then mounted initiative campaigns to reinsert the statutes into law. Both initiatives failed. In Oregon 56% of the voters rejected the intrusion that such statutes compel in private lives. In Colorado 63% of the citizens rejected such regulation.

THE PROPOSED LEGISLATION IS UNNECESSARY

Finally, the proposed legislation is unnecessary. Montana has adequate and tested statutes presently in law to protect the concerns addressed here. Statutes defining and proscribing sexual intercourse without consent, sexual assault, incest, child sexual abuse, obscenity and indecency all are effective protections to adult and child, male and female. The statutes were carefully crafted by a Commission to address Montana legal precedent. They have been amended to increase penalties and protections where warranted. Law enforcement is familiar with their provisions and experienced in their prosecution. To begin a new enactment will only usher in new legal battles over correct interpretation and application.

CONCLUSION

No one wants to live in a dangerous or immoral society and the businesses represented here are not advocating that in their opposition to this proposed measure. The trouble with the bill, however, is that in its well-intentioned effort to protect, it casts a net too wide. Law is supposed to give notice of the conduct that will be considered and punished as criminal. This bill, if enacted, will not give notice. Because there are no clear guidelines and virtually everything can be construed as "obscene," innocent conduct will be subject to arbitrary and selective prosecution. The economic impact will be substantial and sadly will constrict the free availability of literature, art, and entertainments now available to Montanans.

Testimony to Senate Judiciary Committee, February 8, 1995, HB 83.

EXHIBIT 16
DATE 2-8-95
HB 83

MONTANA ENTERTAINMENT COMPANY

LIST OF COMPANIES REGISTERED FOR

Curtis A. Lord
Lord's Video
419 W. Main
Laurel, MT 59044
(406)628-6070

A. Rudy Autio
2322 Duncan Dr.
Missoula, MT 59802
(406) 549-2579

K's Video Korral
814 South First Street
Hamilton, MT 59840
(406)363-6099

Rebecca Reno
Video Library
Box 22209
Billings, MT 59104
(406)652-5656

Deborah A. Sporich
The Bookstore
26 North Idaho Street
Dillon, MT 59725
(406)683-6807

Maureen O'Brien
Mountain Market Place
109 N. 4th Street
Hamilton, MT 59840
(406)363-6245

Dan G. Cederberg
The Wilma Amusement Company
131 South Higgins
Missoula, MT 59802
(406)721-2100

Montana Entertainment Corporation
2611 Brooks Street
Missoula, MT 59801
(406)721-2100

Pacific Northwest Booksellers Association
1510 Mill Street
Eugene, OR 97401-4258
(503)683-4363

Daniel W. Frazee
Blockbuster Video
208 N. Montana Avenue, Suite 203
Helena, MT 59601
(406)449-4074

Fact & Fiction
216 W. Main
Missoula, MT 59801
(406)721-2881

Diana Romain
Village Book Shop
Gateway West Mall
Kalispell, MT 59901
(406)752-8041

Russell W. Lawrence
Chapter One Book Store, Inc.
252 Main Street
Hamilton, MT 59840
(406)363-5220

Gilbert A. Millikan
Gil-Mil, Inc., d/b/a Showcase Video
P.O. Box 2396
Missoula, MT 59806
(406)721-7154

FEB 7 1995

EXHIBIT 16
DATE 2-8-95
HB 83

Dear Cynthia:

I sent the following letter to five Republican senators from the Hi-Line: Aklestad, Cole, Gage, Jenkins and Jergeson.

Best,

Dee McNamer

314 Evans
Missoula, MT 59801
Feb. 5, 1995

Dear Mr. Jergeson:

I am writing as a former fellow Hi-Liner to urge you to oppose House Bill 83: "An Act Revising the Obscenity Law."

Montana adults can and should make their own decisions about what they will read or watch. It's that simple. Laws already exist for the protection of minors.

I find it deeply ironic that so many Republicans -- who otherwise want a minimal government presence in our daily lives -- are so eager to call in the government as moral babysitter and censor.

As a writer, I worry, too, about the effect this bill would have on booksellers, particularly those running their own businesses. Operating a small business is tough enough. Owners don't have the time or manpower to comb through every book in their store for passages someone out there might deem offensive. To keep the government out of their business, they will be encouraged to eliminate anything but the most bland, inoffensive, mediocre reading fare on the market. Readers are the big losers.

When I was a kid in Cut Bank, a local zealot with a certain amount of clout used to make sure that library books he personally found offensive -- Salinger's Catcher in the Rye was one of them -- were removed from the shelves. That kind of Big Brotherism gives me the chills. This bill is a version of it. Please vote against it.

Sincerely,

Deirdre McNamer

VIDEO SOFTWARE DEALERS ASSOCIATION
Montana Chapter
520 Euclid Avenue
Helena, MT 59601

January 15, 1995

Re: HB 83

Dear Representative:

I am writing to you as President of the Montana Chapter of the Video Software Dealers Association. The Video Software Dealers Association is a trade association that promotes the economic interests of video retailers statewide. Most of our members are small business owners. All contribute a valuable component to the Montana economy by providing jobs in our communities and contributing taxes to the general fund of this state.

WE STRONGLY URGE YOU TO VOTE NO ON HB 83.

The effect of HB 83, if passed, will work a hardship on Montana video retailers both economically and personally, by requiring the retailer to act as the community's conscience and censor. While we do not dispute that obscenity can be a problem and the state has a right to regulate, HB 83 goes far beyond what is necessary for the adequate protection of this state's citizens.

Presently Montana obscenity law protects minors from the distribution of obscenity, defines obscenity in terms that will meet Constitutional requirements, provides appropriate exemptions for the innocent employees of distributors of obscenity, and allows exemptions for video and motion picture material rated by the motion picture industry as G, PG, PG-13, or R.

HB 83 extends the restrictions on obscenity to adults, changes its definition thereby raising questions about its constitutionality under the Montana Constitution, eliminates protection for employees, and makes no provision for material already rated by the motion picture industry. It makes possession, delivery, or distribution, **even to adults**, a felony, conviction of which could subject the offender up to a $50,000 fine or 10-year prison term.

Individuals will disagree about what is obscene. HB 83's definitions do not provide good guidelines. Small video store owners cannot absorb the economic risk posed by the threat of prosecution if they do not censor in a satisfactory way for their

EXHIBIT 16
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HB 83

community. Defense of an alleged violation, even if successful can devastate the solvency of a small business. More importantly, it should not be the responsibility of the small business owner to protect the adult consumer from himself.

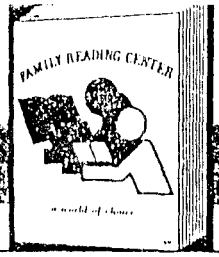
Given the risk and uncertainty that are contained in HB 83, its effect will surely be that legitimate videos, and other material, will be withdrawn from circulation. That effect will be translated in terms of jobs and revenue.

Please VOTE NO on HB 83.

Very truly yours,

Jerry Skillman

js:j



SOUVENIRS POST CARDS

BILLINGS NEWS, INC.

Phone (406) 245-5784 Fax (406) 245-0673 711-4th Avenue North Billings, Montana 59101

Thomas Keating
Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

RE: Censorship Bills - House Bills 82 & 83
"Montanas against Censorship"

Dear Senator

You have been asked to support a bill that would result in the suppression of books and magazines that are protected by the first amendment. Please allow us to point out the following.

Housebill 83 states: Any publication, display, rental, sale or delivery of obscene materials is forbidden. Obscene items would be those the average person would find appeals to prurient interests are " patently offensive" descriptions or depictions of sexual conduct and lacking in serious literary, political or scientific value.

Proponents of Housebill 83 called it an anti-crime measure saying that a ban on obscene material would reduce sex crimes, protect women and children. Montana already has laws to protect people who sell obscentity to children, abuse children or commit sex crimes. Housebill 83 is definitely not needed, it is to vague, it goes against the constitution of the United States Of America and could be used to prevent adults from buying, watching, reading or obtaining materials that they do not consider to be obscene.

Free speech is the fulcrum upon which our entire democratic system depends. To tamper with the mainspring of that system is unthinkable, and yet, at this very moment, there are other people busy, anxious, little people marching on libraries, newsstands, bookstores, movie houses, video rentals, publishers, televison stations & advertising agencies, in an effort to suppress any words, ideas or images with which they disagree with. These people are self appointed censors who firmly believe that if we had less freedom, less capacity to question and challange the establishment, America would be a better place in which to live. They are of course wrong !!!

EXHIBIT 16
DATE 2-8-95
HB 83

A prime example of "Vague and unchallenged obscenity censorship bills" in some states have caused the following books and films from the library shelves:

Huckleberry Finn : removed because of "racist"
Mother Goose's Nursery Rhymes: because they are "anti-semitic"
The Shinning : "contains violence, demonic possession and ridicules the christian religion"
Time -Life Books on Tokyo: removed because it included a photograph of the buttocks of nude Japanese businessmen at a public bath.
The Wizard Of Oz: because it promotes "witchcraft"
Snow White and The Seven Dwarfs: because of its ostensible "violence"

Other books removed from schools, libraries and in some cases, whole communities include such classics as - The Diary Of Ann Frank, The Grapes Of Wrath, Of Mice and Men, To Kill A Mockingbird and recently Romeo and Juliet.

Films that have been removed
A Passage To India - Victor/Victoria, A Clockwork Orange, Star Trek IV, The Voyage Home, The National Coalition on Televison Violence censored the cartoon film Lady and The Tramp, and the popular Christmas ballet The Nutcracker for its ferocious and godless " battle between toy soldiers and mice"

Free speach is prevalent to our survival as a nation and a state, we must never forget that even the most subtle restriction of free speach can lead to proliferation of tyranny and injustice on a scale of unimaginable proportions.

On September 17, 1994 the United States Of America celebrated the 207th anniversary of its constitution. The preservation of this document through two centuries of tumultuous change says a whole lot about our greatness as a nation and our dedicated and uncompromising love of freedom particularly the freedom to speak, to worship, to read, to watch and to think about anything we dare, Housebill 83 challenges all these things. It is wrong for Montanans!!!

Where censorship prevails, there can be no freedom, we feel it's that simple.

Thank You
Sincerely,

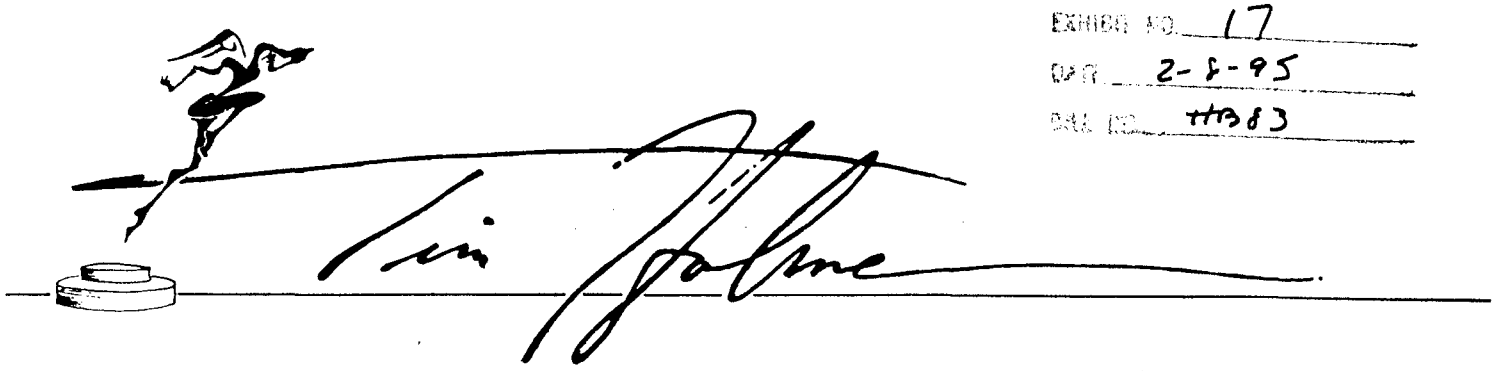
William Parnell
Director Sales/Marketing

Earl L Keenan
Owner/President

John V. Keenan
Vice President

Patti Lackman
Secretary/Treasure

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 2-8-95
BILL NO. HB 83



Testimony against H.B. 83 before the SENATE JUDICIARY COMMITTEE

Of the many fallacies contained in this bill, I will hold my comments to only one. It is suggested that this bill would protect any expression of a sexual subject which has artistic value. I disagree that any such protection exists.

This bill doesn't outlaw prurient treatments of the subject of sex, it outlaws any treatments! It assumes that every depiction of this monumentally vital aspect of human life is nothing but prurient. It would still allow a person to say with their words that sex is a beautiful sacrament with which God has blessed humanity, but it would deny the same freedom to visual artists like myself.

In Ravalli County we can't even show a simple innocent nude. How are we to believe that in this kind of atmosphere, any depiction of even the most spiritual and transformative dimensions of sex will somehow be protected because of its esthetics? Artistic value cannot be proven, yet that is what this bill would require of artists.

In fact, I challenge the proponents of this bill to locate, among all the greatest art of history, any image of a sexually explicit subject that would have enough aesthetic quality to satisfy these requirements!

You have before you the testament to Montanans that sex is never healthy, beautiful or sacred, and any artist, like myself, who suggests that it is is a criminal. Of course you wouldn't pass a ridiculous bill like that. But that's what this bill is and I urge you, for the sake truth and art and freedom, to reject it.

Thank you.

Tim Holmes,

Tim Holmes, Sculptor
Contact: Bob FitzGerald, 1515 Winne, Helena, Montana 59601 telephone 406/443-1690

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 18
DATE 2-8-95
BILL NO. HB83

Senate Judiciary Committee

Testimony against H.B. #83, February 8, 1995.
Submitted by Bob FitzGerald, Helena.

Mr. Chairman and members of the committee:

Every time lawmakers debate a bill, regardless of its content, what you are really doing is struggling with the question of what kind of society we want to be. The Obscenity Bill asks this question more clearly than most bills. You will make a choice, when you vote on this bill, pivotal to what kind of community we want to be.

One choice is to become a community based on fear, on the assumption that any expression we cannot control will inevitably turn into evil and destroy us and therefore absolute control equals absolute safety. This kind of fear assumes that most people can't be trusted to make good choices so their choices should be controlled. This, of course, only protects the few at the expense of the many and is called Fascism.

The alternative is to base our community on the assumption that all people are created with equal powers to discriminate between good and bad ideas; that we would rather live with the bad decisions of the few than the diminished freedom of all. It is this basic faith in humankind that spawned such developments as democracy and the Gutenberg Bible.

Democracy is a gentle civil war, fought with ideas rather than bullets. When any idea or expression, such as the depiction of human bodies, is removed from contention, it limits the freedoms of all. It in fact violates the very freedom we were given by our wise predecessors to choose for ourselves.

If we really believe that we have arrived at the pinnacle of human judgement and look down upon the rest of the debauched society, then yes, it is our duty to create a fascist society to keep ideas and expressions under our control.

But if we truly believe in the refining process of democracy, then let's put away fear and do battle not with power but with ideas!

I respectfully urge you to kill this bill.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 19
DATE 2-8-93
BILL NO. HB F3

MONTANA ASSOCIATION OF THEATRE OWNERS

Sen. Bruce Crippen
Chairman Judiciary Committee

Just another note to let you know I'm still very much against HB83, for the following reasons.

1. We already have a bill that is adequate.
2. This is a censorship bill.
3. I resent someone thinking they know better what I should see, read or think better than I can.
4. It will be hard to enforce because it is so sweeping in its scope.

I own a theatre & video store in Glendive and am very concerned about this bill & any like it. Please vote to kill this one.

Sincerely,
Dave Smith
1129 Yellowstone Ave
Billings, Mt 59102

MATO

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 2-8-95
BILL NO. HB 83

TESTIMONY AGAINST HB 83
Russell W. Lawrence
512 Blodgett Camp Road
Hamilton MT 59840

My name is Russ Lawrence, and my wife and I own a small business in Hamilton, Chapter One Book Store. I have come here today to urge you to reject HB 83, a vaguely-worded attempt to legislate morality across the state.

This bill goes so far beyond existing state law in removing important safeguards that it will affect materials beyond the scope of their stated intent.

This is the only law I know of that is so vaguely worded that it is literally impossible to know if you are in violation of it until you are convicted. How is one to know what the "average person" finds "patently offensive?" Am I an average person? Is Dallas Erickson? Are you? How broad is "average" supposed to be? Does this law mean that material that is acceptable to 49% but not 51% of the population can be banned? Forty percent? Thirty-three and a third percent? Where is that line drawn? HB 83 doesn't say.

HB 83 is being pitched as a "crime" bill, but all it does is to criminalize the viewing of some ill-defined images. Neither the Reagan-era Meese commission nor the earlier Report of the President's Commission on Obscenity and Pornography (1970) found data to support a causal link between pornography and sexual assault. The earlier report stated that "Empirical research designed to clarify the question has found no reliable evidence to date that exposure to sexual materials plays a significant role in the causation of delinquent or criminal sexual behavior among youths or adults." Dr. Frederick Schauer, a member of the Meese Commission and author of the draft document that served as the basis for the commission report, states "I do not make the claim, nor does the report, that the category of sexually explicit material bears a causal relationship to acts of sexual violence."

Dr. John Money, of Johns Hopkins University and one of the world's foremost researchers on deviant sexual behavior, said in the New York Times (January 23, 1990) that "the majority of patients with paraphilias (sexual abnormalities) described a strict antisexual upbringing in which sex was either never mentioned or was actively repressed or defiled." He predicted that "current repressive attitudes toward sex will breed an ever-widening epidemic of aberrant sexual behavior." This bill could be counter-productive.

In 1985, the Institute of Criminal Science in Copenhagen reported that in European countries where restrictions on pornography have been lifted, the incidence of rape over the last 10-20 years has remained constant or declined.

A 1986 study found that Utah ranks lowest in circulation of sex-related magazines, but 25th in number of rapes. New Hampshire ranks ninth in sex-magazine circulation but 44th in rapes. (Baron & Straus, 1984, 1985, 1986).

In 1988, Dr. Joseph Scott and Loretta Schwalm (Ohio State University) could not find a valid connection between rape rates and the circulation of adult magazines (Journal of Sex Research, 1988, vol. 24, pp. 241-250). These same researchers, in another 1988 report on the presence of adult theaters and rape rates, found that other factors, such as the circulation of "outdoor-type" magazines, such as Field & Stream and Guns & Ammo, correlated more closely with rape rates.

In the Harvard Civil Rights-Civil Liberties Law Review, Barry Lynn wrote "Defendants accused of violent crimes against women have asserted that they were influenced by sources as diverse as the "golden calf" scene in Cecil B. DeMille's The Ten Commandments and an Anglican church service. For some defendants, of course, pornography has become a convenient excuse for their actions."

In 1987 a Fort Lauderdale evangelist beat his two-year-old daughter to death while "training" her, he said, according to Biblical injunction. A South Carolina Home for Boys was closed down in 1984 for similar "training" based on the Bible, specifically Proverbs 22:15.

So, what's our response? Do we ban the Bible? Cecil B. DeMille movies? The Anglican Church?

Of course not. The point is that it isn't against the law to believe in the Bible, but it is against the law to beat a child to death. It isn't against the law to believe in the so-called "rape myth," but it is against the law to act on it and to commit rape. That is a fundamental tenet of our legal system: your beliefs are your own business, so long as you commit no crime. Do you really want to start legislating people's beliefs? Banning, or trying to ban, any material that might cause someone to believe something that might cause them to commit a crime is a ludicrous proposition that I urge you to reject.

If the proponents of this bill want tougher law enforcement, they should stiffen the penalties for rape, sexual assault and child abuse. That is the solution, rather than criminalizing the viewing of a magazine or video.

Furthermore, this proposed legislation is so poorly written that its definitions go far beyond what the authors intended. For instance, on page three, section (d)(iii) it refers to "sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation, of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume."

EXHIBIT 20
DATE 2-8-95
HB 83

This section describes every depiction of the life of Christ, and every passion play that ends with Jesus, clad only in a loincloth, bound to a cross and being beaten and tortured by Roman Legionnaires in helmets and leather. If the bill has this unintended consequence, think what other surprises it has in store for us.

This is an example of the kind of silliness we sent our legislators to Helena to do away with. As a small businessman and bookstore owner, I order hundreds of books and receive hundreds of magazines each month. This bill requires that I discern the content of each book and magazine, and somehow weigh it against "contemporary community standards," without even defining the "community." I call that burdensome regulation.

Further, a mechanism already exists in state law for counties and communities to enact such restrictive ordinances if they choose. Ravalli County just did, but Missoula County recently rejected this proposal. Why should you legislators burden Missoula County with something it clearly doesn't want? This is an example of big government intruding on people's lives, telling them what they can and cannot view.

Mr. Erickson says this bill is just an effort to bring Montana law into line with other states, but there are eight other states that have no general obscenity law. The "Miller" language which HB 83 embraces is based on a decision originating in California. Take a look at sex crime rates in California before you go modeling our legislation on theirs. There is no general anti-obscenity law in Oregon, Hawaii, Alaska, and Vermont, and Maine, South Dakota, West Virginia and New Mexico have local option laws similar to that which we have in Montana. Would you rather be in their company, or that of California and New York?

I urge you to reject this poorly-written bill and respect the peoples' wish to keep government out of their private lives.

Thank you for your consideration.

Exhibit No. 21 includes 101 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

TIP TOP VIDEO
1705 5TH AVE.
[illegible]

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 21
DATE 2-6-95
BILL NO. HB 83

If you believe in the **First Amendment**, and you are old enough to decide what movies you want to watch or books you want to read;

If you wish to be notified please include your phone number.

Sign here:

Name:	County:	Telephone #
KEITH SMITH	Hill	265-6685
S. J. Holovnia	Hill	265-8770
Brenda West	Hill	265-8770
Clarence Wehlmeyer	Hill	265-6361
[illegible]	Hill	265-6872
[illegible]	Hill	265-9658
Ty Eissinger	Hill	265-6924
[illegible]	Hill	265-6575
David H. Dalrymple	Hill	5-5019
Brian L Bright	Hill	265-5128
Beverley Smith	Hill	265-2164
[illegible]	Hill	265-9025
Chris Heggen Jr.		377-3219
Joan Hanson	Hill	265-2571
Andrea Bodovinac	Hill	265-5142
John Hinegardner	Hill	265-5514
[illegible]	Hill	265-1470
Carrie Couturier	Blaine	357-2560
[illegible]	Hill	
[illegible]	Hill	
Mark Carpenter	Hill	265-8317

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 22
DATE 2-8-95
BILL NO. HB83

Mr. Chairman, Members of the Committee, my name is Samantha Sanchez and I appear here today on behalf of the Montana Civil Liberties Union, as a member of the board and as a member of the Montana Bar.

The American Civil Liberties Union has, of course, always opposed censorship efforts and so we oppose HB 83's ban on obscenity.

Much has been said about the need to censor pornography to protect women from sexual violence. Even some feminists claim that depicting women in sexually subordinate situations promotes the victimization of women and encourages sexual violence against women and so they favor censorship of such pornography.

The ACLU has a long and proud history of defending women's rights and legal equality, including defending suffragette Margaret Sanger's right to talk about birth control, which was prosecuted as obscene. In fact, in 75 years, the ACLU has argued more women's rights cases before the Supreme Court than any other organization, but the ACLU does not agree that censorship should be used in the name of women's rights and women's safety.

First there has never been a causal connection established between pornography and sexual violence. The comprehensive studies start with the 1970 President's Commission, finding no causal connection, in which two of the commissioners stated that they would have welcomed evidence connecting erotica with crime "for if any such evidence existed we might have a simple solution to some of our most urgent problems. However, the research fails to establish a meaningful causal relationship or even a significant correlation. To assert the contrary. . . is not only to deny the facts but also to delude the public by offering a spurious and simplistic answer to highly complex problems."

Government commissions in other countries, Canada, New Zealand, England, Europe, and Asia have produced volumes of research, all reaching the same conclusion. [In fact the only commission that did suggest a connection was the 1985 Meese Commission, and those conclusions have been criticized as politically motivated and not supported by the evidence gathered by the commission and have been denied by one of the commission's authors.] In researching a recent book, ACLU President Nadine

Strossen found no causal connection has been established in her search of social science literature. And, most recently, the National Research Council's Panel on Understanding and Preventing violence concluded, in a 1993 survey of laboratory studies, that "demonstrated empirical links between pornography and sex crimes in general are weak or absent." The topic has become a very popular one for psychiatrists and social scientists but study after study after study have failed to find any connection.

In fact, if anything, the studies suggest that the greater availability of sexually explicit material is positively correlated with greater gender equality and lower rates of violence against women, suggesting that such materials may act as a release for some troubled individuals.

Compare, for example, Singapore, which tightly restricts pornography and has one of the strongest law enforcement systems in the world as we saw in the caning of an American student in a recent case, with Sweden where pornography has been freely available for 30 years. Singapore has a much higher rape rate than does Sweden, where women also enjoy much greater legal and social equality, as well as being safer. Likewise, Germany removed restrictions on pornography in 1970 and has found their rape incidence decline relative to other crime.

Similarly, in this country, we do not find a correlation between restriction of pornography and low rates of sexual violence, though there is evidence of the opposite. Utah, for example, ranks 50th in the Sexual Magazine circulation index but 25th in rapes while New Hampshire ranks ninth in that index --indicating a high rate of sexual literature -- and 44th in rapes.

In fact researchers have found that the only geographical factor that reliably predicts the rate of rape is the number of men between 18 and 34 living in that area.

Saying that rapists are drawn to pornography does not mean it caused their violence. That is like saying that flies cause garbage.

Second, the ACLU's opposition is based on our observation that throughout history, censorship laws and dress codes have been used against women in some way or other. In fact, a model censorship law drafted by feminists Catharine MacKinnon and Andrea Dworkin,

EXHIBIT 22
DATE 2-8-95
HB 83

has been adopted into the Canadian legal standard of pornography. Since that ruling, more than half of all feminists bookstores in Canada have had materials confiscated. It is important to recognize that these laws often end up punishing the very individuals and ideas they are supposed to protect.

In fact, Canadian customs officials concluded that two of Andrea Dworkin's own books were pornographic under her definition and therefore seized the books at the U.S. Canadian border. However, magazines like Playboy and Penthouse and pulp novels about brutalizing women are not being confiscated because they have powerful publishers and possibly because they are more mainstream and accepted by the customs officials. Whether its pornography or nude dancing or prostitution, it seems that whenever people want to stop men from acting immorally, somehow women get arrested.

Changing the way people think is a job for parents and educators, not bureaucrats, and we are told that the people of Montana have just voted for less government intrusion in their lives. But HB 83 would have bureaucrats deciding on appropriate reading for Montanans. In the words of Justice Harlan, "it is largely because govt officials cannot make principled decisions in this area that the Constitution leaves matters of taste and style so largely to the individual."

As for the contention that 47 other states have this law, a colleague has done some preliminary research into 15 states, and so far only two other them -- Illinois and Florida -- can be said to have statutes as all-encompassing as HB 83. Two have struck down obscenity statutes as unconstitutional. The other 11 have statutes with lesser penalties or more defenses and -- most importantly-- do not extend to the creators, the writers, artists, sculptors, etc. None had so severe a penalty as $50,000/10 years for importation.

Ever since its founding 75 years ago, the ACLU has fought against censorship and the repressive intrusion of the government into people's private lives. We neutrally defend all rights because experience shows they are indivisible. If the government gets the power to suppress one right for one person, then no right is secure for any person and history has shown this true many times. Women, along with everyone else, are entitled to both free speech and safety. We do not agree that we must sacrifice one for the other.

We agree something should be done to stop sexual violence, but there is not a shred of evidence that this is it. Zero. We have pleaded with this legislature to invest in treatment programs that can stop this behavior as soon as it is identified, but all we have gotten is a promise that after three rapes they will be put away for life. Utah, for example, has had a very successful treatment program. None of these programs are completely successful, but the success rate is certainly better than zero.

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Helena, MT 59601
(406) 442-7170

EXHIBIT NO. 23
DATE 2-8-95
BILL NO. HB583

Mister Chairman, members of the Committee, I am Ron Silvers, a Licensed Professional Counselor in private practice. I am the Vice President and Secretary for the Montana Sex Offender Treatment Association. I represent only myself in this statement.

For over fourteen years I have worked with sexual assault victims of all ages, their families, and sex offenders. My professional experience includes thousands of hours in the evaluation and ongoing therapy for several hundred sex offenders. I think pornography distorts and degrades human beings and our sexuality.

I do not believe, based on my experience with sex offenders in therapy, that their use of pornography caused them to commit sex crimes. My extensive professional experience has brought me to the conclusion consistent with Dr. Judith Becker's opinion, then member of Attorney General Edwin Meese's commission on Pornography, and director of the Sexual Behavior Clinic at New York state's Psychiatric Institute when she said in 1986, "I have been working with sex offenders for ten years and have reviewed the scientific literature and I don't think a causal link exists between pornography and sex crimes."

I have found several common characteristics in sex offenders which I do believe have a causal link to sex crimes (among others).

1. Sex Offenders are often very ignorant about basic human sexuality.
2. Offenders are immature, socially underdeveloped, withdrawn, isolated, and angry.
3. Some use pornography obsessively, some not at all, none in our program will claim pornography caused them to commit a sex crime. In fact, any offender client who would say something to the effect "My use of pornography made me molest my ten year old daughter" would be laughed at in any of our sex offender therapy groups.

Sex offenders in evaluation or the early stages of therapy will frequently blame anyone or anything for their crime including the victims, alcohol and/or drugs, their marriage partners, etc. Even these individuals do not blame their use of pornography as a causal factor for their offense. How absurd to say, "If I hadn't seen last month's Hustler, I never would have done it."

As a treatment provider, I am very likely to see a wide range of materials confiscated from offenders at the time of their arrest. In addition to what many of us would agree is hard

EXHIBIT 23
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HB 83

core pornography, offenders use other items which would be hard to define as pornographic, in order to stimulate deviant fantasies within themselves. The following items were taken from our clients at their arrest:

1. Homemade video - a television gymnastics show,
2. Homemade video - a television Mousercise show,
3. "Dance Workout With Barbie",
4. Back to School, J.C. Penney's children's clothing catalogue,
5. Barbie dolls.

Many older sex offender clients, or those brought up in poor rural homes, report the Sears catalogue and National Geographic magazine gave them lots of sexual pleasure. We have 44 clients in our program, fully a third did not use pornography prior or during their offense.

I have found that the most effective weapon against the distorted messages of pornography is accurate and explicit sexual information. Such information is the only way to confront misinformation and clarify what healthy sexuality is in reality. I am as disgusted with pornographic material as anyone in this room. However, I take my responsibility as a parent and an American citizen seriously. I have made it my life's work to help sex

offenders stop sexual violence toward women and children.

With all due respect, I do not wish to relinquish my responsibility and rights to any member of this committee to determine for me what materials and information are appropriate in my work as I teach healthy human sexuality to either my clients or my children. I do not and did not elect my representatives in government to make those professional or personal decisions for me.

Thank you for your attention.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 24
DATE 2-8-95
BILL NO. HB83

Testimony of Barbara Theroux

On behalf of the American Booksellers Association

Before the Montana Senate Judiciary Committee

In Opposition to House Bill 83

February 8, 1995

I am Barbara Theroux. I appear before you today in several capacities: as the owner of an independent bookstore, Fact & Fiction in Missoula, and as a director of the American Booksellers Association, which represents 4,500 booksellers who operate 7,400 stores across the country, including 32 in Montana. I am also appearing on behalf of ABA's First Amendment foundation, the American Booksellers Foundation for Free Expression, and The Media Coalition, a group that represents most of the booksellers, publishers, periodical wholesalers and distributors, recording and video game manufacturers, and recording and video retailers in Montana and the rest of the country. I am here to briefly explain why Montana booksellers oppose House Bill 83.

I have been a bookseller for over 20 years. For the last 16 years, I have lived in Missoula, working first at the university bookstore, then opening my own store nine years ago. Fact and

Fiction is a general bookstore that carries mainstream works of fiction and non-fiction and a large selection of children's books that we supply to schools and libraries. I have never knowingly sold any work of hardcore pornography. As a parent, I am against pornography and other material that is "harmful to minors."

But I am still very worried about House Bill 83. It would ban the sale of any work that appeals to "prurient" interest, is "patently offensive" to the community and lacks serious literary artistic, political of scientific "value." This "guideline" gives me little guidance: it is not a list of specific titles but a general description that I must apply using my own judgment. But how can I be sure that someday I won't make a mistake and sell a book that a jury later decides is obscene?

The realities of bookselling today make this strong possibility. I offer more than 10,000 titles for sale in my store. New titles arrive by the dozens every day. While I do my best to know something about every book I sell, it is physically impossible for me to inspect each one. In addition, we special order books at the request of our customers. There is always a chance that we will unknowingly receive a book that might be held to be obscene.

If H.B. 83 passes, the only way I can protect myself and my store is to remove from sale all books that appear to have sexual content. Many books on art, photography, health and sex education would have to be taken off the shelves. In my mind, there is no question that this material in not obscene. However, H.B. 83 puts that decision in the hands of policemen and prosecutors. Even

though I am sure I would be acquitted in a trial, I cannot risk the bad publicity of an arrest for selling obscene material. This is what lawyers call the "chilling effect" of laws regulating free speech.

What is so odd about the House's decision to ban obscenity is that it flies in the face of recent election returns. At least part of the explanation for the Republican triumph in the fall is a desire on the part of the voters to reduce the role of government in their lives. Yet H.B. 83 extends government's reach into the most intimate decisions we make--what we want to read, see and hear.

Of course, the voters were not voting for hardcore pornography, but in at least two states they did explicitly vote against censorship. In Colorado and Oregon, voters were asked whether they wished to adopt laws very similar to H.B. 83. In both states, booksellers, librarians and others waged strong campaigns against the initiatives because of the fear of a chilling effect on non-obscene works with sexual content. Both measures were decisively defeated. In Colorado, 63 per cent of the voters rejected the obscenity amendment. Even in Oregon, which has no law against the sale of sexually explicit material to adults, 56 per cent of the voters said they didn't want government to restrict free speech.

We have been having similar fights in Montana for years. Only two years ago, the Missoula City Council killed a proposed ordinance that would have banned the sale of obscene material.

Many local governments have decided they do not want these laws. House Bill 83 makes an end run around home rule and imposes restrictions on our personal freedom that we have already rejected.

Today, legislatures across the country are acting to cut the cost of government and lighten the burden of regulation on business. On behalf of my fellow booksellers and the other Montana businesses that produce and distribute books, magazines, movies, videos and recordings, I urge you to consider the economic impact of H.B. 83. But businesses will not be the only ones hurt. The enactment of H.B. 83 will cost all Montanans a large measure of their personal freedom. H.B. 83 is a piece of government regulation that none of us can afford. I urge you to defeat it.

Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 25
DATE 2-8-95
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MONTANA ASSOCIATION OF THEATRE OWNERS

Sen Crippen & Members of Committee

My Name is Howard Pukkell, I am the Owner of 14 Metro Pikes screens in 8 different towns and am representing the M.A.T.O. An Organ of Independent theatre owners in Montana representing over 50% of the 125 existing screens in Montana. Myself as a theatre owner & the Board of MATO Officers ~~don't~~ are not in favor of Porn or the distribution of it however we feel that HB 83 is way too Broad to be able to live with. We realize that the Proponents have stated that the law would not apply to Motion pictures theatres that currently play only MPAA Rated films. ~~in these screens~~, But the law in its present form does not address this, it simply states "film", which in my opinion puts us at risk because we operate our theatres in violation of the Obscenity law with regard to Rated movies whether or not some one is offended by an R rated movie we

MATO

would be Constantly looking over our shoulder and wondering when it will come, And We haven't done anything Wrong. Another sad thing that HB83 Would accomplish if passed the Bill is it will make Obscene Material Disappear from the public eye, but it will not go away it simply dissappears in the Closet ~~so to say~~ still available to the people that really want & need it. out of the Trunks of Cars & sleezy Hotel rooms, and then What little Control We now have becomes gone forever. the Current Obscenity law on the book seems more than Adequit and in our opinion there is no reason to expand upon and limit the use of the Media of Art, Book, Motionpicture film and all the personal adult freedoms we now enjoy.

Thank you

Howard Jones Sheild

Pres. T.C. & Nelson Theatre

Nelson, Mt. 59846

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 24
DATE 2-8-95
BILL NO. HB 83

February 7, 1995

To: Members of the Senate Judiciary Committee

From: Jim Heckel, Director, Great Falls Public Library (453-9706)

Re: HB 83

Thank you for the opportunity to express, as Chair of the Intellectual Freedom Committee of the Montana Library Association, opposition to HB 83.

Libraries occupy special and very necessary positions in democratic society. Uniquely among our many institutions, libraries are charged with the unbiased collection and easy dissemination of information, without judgement or prejudice. Libraries provide neutral arenas for the average citizen to acquire and ponder information and viewpoints before reaching his or her own conclusion about issues.

Libraries are sometimes home to information or viewpoints which may be controversial or even offensive to opposing segments of society. Because some materials may be controversial or offensive, libraries have long been the target of those who would "protect" segments of the society from harm by denying access to certain materials. We call this censorship. Censorship, we feel, is detrimental to the best interests of democracy.

HB 83 prohibits the purchase and distribution of materials deemed obscene. This applies to all citizens of the state. HB 83 casts a wide net to catch a few fish. Libraries are not the "fish" that need catching.

We oppose HB 83 because:

a. It presents a "chilling effect" in that the actual or implied threat of prosecution would be a powerful incentive for libraries to not acquire materials which would be controversial, even if not proven obscene in a court of law. The threat of a lawsuit, however unjustified, is a potent weapon.

b. Libraries, which serve a special function in society, are not protected under HB 83. Note that there is specific protection provided in 45-8-206, MCA for libraries, museums and educational institutions. This creates the peculiar situations wherein libraries may distribute "obscene"materials to minors but not to adults.

c. The three pronged test for obscenity depends on local standards. We feel that this type of legislation is best left to individual communities to determine what is

(over)

"obscene" in that community. Certainly Missoula County differs from Ravalli County, as does Missoula from Jordan. Let local communities pass laws which define what is locally "obscene."

d. We fear a "slippery slope" of ever increasing laws which will further define and narrow what is acceptable reading or viewing material.

e. There is no funding attached to this legislation to pursue execution.

f. There currently is adequate legislation which should be fully enforced before more legislation is enacted.

Steel

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 27
DATE 2-6-95
BILL NO. HB 83

Exhibit No. 27 includes 23 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

PETITION IN

OPPOSITION TO

HOUSE BILL 83

"AN ACT REVISING THE

OBSCENITY LAW"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 28
DATE 2-8-95
BILL NO. HB 83

SENATE JUDICIARY COMMITTEE
BRUCE CRIPPEN, CHAIR
February 8, 1995

Mr. Chairman, members of the committee. For the record my name is Richard Miller. I am Montana State Librarian.

I am here today to speak in opposition to HB 83 for a number of reasons:

1. HB 83 does nothing to improve already existing Montana law, which protects minors from obscene materials.

2. HB 83 presents an overbroad approach to dealing with obscenity extending application of the law to adults, and eliminating evidentiary protections already in existing Montana law for artistic, literary, scientific, educational or other merits of the material," as well as for taking into account the "purpose of the author, creator, publisher and disseminator." [Both of these appear in 45-8-20 (3) MCA.]

3. HB 83 proponents claim that this proposed legislation is "similar to" the laws of 44 or 45 other states. They fail to mention something I have discovered in reading the statutes of 22 other states; 19 of these states have specific statutes protecting minors from obscenity, and I would imagine that this ratio holds true for the other 27 states as well. The legislation proposed here, while not specifically eliminating the language of 45-8-206 MCA, in essence does away with that specific protection for minors.

4. In their zeal to bow to the language of the U.S. Supreme Court case of Miller vs. California, the proponents have failed to consider how other states have struck a <u>balance</u> on such a sensitive issue. Here are some examples:

   a. Alabama says obscenity is not prosecutable if it is for a "bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose." Furthermore Alabama indicates that criminal provisions of the law "shall not apply to bone fide public libraries, or public school or college or university libraries or their employees or agents acting on behalf of the legitimate educational purposes of such [institutions]."

   b. Arizona excludes works of art or those of anthropological significance from the definition of obscenity, as well as "any depiction or description which, taken in context, possesses serious educational value for minors, or which possesses serious literary, artistic, political or scientific value."

c. Arkansas protects from prosecution for dissemination of obscenity, employees, directors and trustees of public libraries; it also protects material used by any "recognized religious, scientific or educational institution."

d. California protects law enforcement and judicial use; medical, scientific, and educational activities; and "lawful conduct between spouses."

e. In fact 17 of the 22 states whose statutes I reviewed have specific protections nearly always for the categories I mentioned above, and in a number of cases also for museums, hospitals, art galleries, and historical societies. Such protections appear in the statutes of the following states, among others: ID, NV, ND, OR, SD, UT, WA and WY.

5. Montana's current law has already struck a balance by allowing evidentiary latitude under subsection (3) of 45-8-201 MCA (as mentioned above, and as allowed by many other states), and by its protection of minors with specific exemptions for bona fide public schools, colleges, universities, public libraries and museums under 45-8-206 MCA.

For those people who were here when the language was crafted for Montana's current anti-obscenity law, they will remember that it was written after a number of very long, hard-fought sessions among the Legislature, agency representatives, other interested parties (including out-of-state interests), and then Attorney General Marc Racicot. No one got everything they wanted, but it was statutory language drafted to try to accommodate all parties. On such a sensitive issue, that process was diplomacy at its best.

Now the proponents of HB 83 bring forward language which will:

-- undoubtedly conform to the Miller vs. California case.

-- probably make moot the legitimate protections laid out in the current law under 45-8-206 MCA.

-- probably undo the delicate balance existing in current statute which takes into account the interests and concerns of all parties.

Obscenity is not a topic most of us would choose to deal with. In fact, at least to some degree, it is one price we pay for living in a free society. How we deal with obscenity is a measure of how strong our democratic ideals are.

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I would like to leave you with two quotations from two different U.S. Supreme Court justices:

-- Justice Felix Frankfurter said: "The safeguards of liberty have frequently been forged in cases involving not very nice people." (1962)

-- Justice Louis Brandeis in a 1927 dissent said, "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent."

I hope in our zeal to "protect" our citizens we do not lose something more precious. I do not envy you your position of responsibility. I wish you well and hope that all of us can sort through the emotion and the rhetoric so often associated with this topic and see our way clear to our ultimate purpose.

Thank you for your attention to my remarks.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 29
DATE 2-8-95
BILL NO. HB83

MEMBERS OF THE SENATE JUDICIARY COMMITTEE, MY NAME IS RICK DEADY AND I STAND BEFORE YOU AS AN AVERAGE PERSON. HB 83 IS LEGISLATION THAT ASKS THAT AVERAGE PEOPLE SET A COMMUNITY STANDARD. I WOULD POSE TO THE COMMITTEE THAT THIS HEARING ITSELF PROVES THAT LANGUAGE IN THIS BILL IS TOTALLY UNENFORCEABLE AND IMPOSSIBLE TO INTERPRET. IN THE WEEKS PRECEDING THIS HEARING THERE HAVE BEEN MANY EDITORIALS BOTH PRO AND CON OVER THIS BILL. HOWEVER, EVEN AMONG THE PROPONENTS OF THIS BILL YOU CAN NOT FIND AN "AVERAGE" CONCLUSION.

THE SPONSOR OF THIS BILL, REPRESENTATIVE HERRON WAS QUOTED IN THE GREAT FALLS TRIBUNE AS SAYING THAT THIS BILL WILL REMOVE MOST HARD-CORE PORNOGRAPHY FROM MONTANA. YOU ALSO HAVE A SUPPORTER IN REPRESENTATIVE GRIMES WHO SAYS THAT IT IS NOT A BILL ABOUT PORNOGRAPHY, BUT A BILL ABOUT OBSCENITY. YOU ALSO HAVE OTHER REPRESENTATIVES CLAIMING THAT IT IS A "GET TOUGH ON CRIME" BILL NOT A FIRST AMENDMENT ISSUE. I FOR ONE, AS AN AVERAGE INDIVIDUAL, HAVE SOME DIRE CONCERNS ABOUT THIS LEGISLATION.

I FIND MANY THINGS IN THIS SOCIETY TO BE OBSCENE. OBSCENE IS DEFINED BY WEBSTER'S NEW WORLD DICTIONARY AS: OBJECTIONABLE OR REPUGNANT TO ACCEPTABLE STANDARDS OF DECENCY OR MORALITY; INDECENT; PORNOGRAPHIC; OFFENSIVE IN LANGUAGE OR ACTION; TENDING TO INCITE LUST OR DEPRAVITY. I FOR ONE FIND THE MAGAZINE SOLDIER OF FORTUNE TO

BE REPUGNANT AND OBJECTIONABLE, I FIND LETTING PEOPLE GO HUNGRY, HOMELESS AND WITH OUT ADEQUATE MEDICAL TREATMENT OBJECTIONABLE AND REPUGNANT, I FIND FREDDIE KRUGGER MOVIES OBJECTIONABLE AND REPUGNANT. SO WHY IS IT THAT THIS PIECE OF LEGISLATION CHOOSES TO ONLY LOOK AT CERTAIN CLAUSES OF THE DEFINITION AND NARROWLY CONFINE THE ACTS IT FINDS AS OBSCENE.

DO I WANT TO IMPOSE MY PARTICULAR BELIEF IN WHAT I DEFINE AS OBSCENE: NO, I MAY FIND THE CONTENT OF SOLIDER OF FORTUNE MAGAZINE OR A FREDDIE KRUGGER MOVIE TO BE OBSCENE, BUT I AM NOT IN A POSITION TO TELL EVERYONE ELSE THAT THEY CAN NOT READ OR VIEW THAT MATERIAL. U.S. SUPREME COURT JUSTICE POTTER STEWART SAID THAT HE WOULD NOT ATTEMPT TO DEFINE "HARD-CORE" PORNOGRAPHY, "BUT I KNOW IT WHEN I SEE IT."(1) REGARDLESS OF WHICH SIDE OF THE ARGUMENT YOU ARE ON, YOU CAN SEE THAT JUSTICE STEWART SET THE PARAMETER OF ACCEPTANCE IN THE FIRST PERSON, I, NOT THE COLLECTIVE WE. D.H. LAWRENCE, WHOSE BOOK LADY CHATTERLEY'S LOVER WAS BANNED IN THE US FROM 1928 UNTIL 1959, ONCE SAID: "WHAT IS PORNOGRAPHY TO ONE MAN IS THE LAUGHTER OF GENIUS TO ANOTHER." (2)

WHAT THIS BILL IS INTENDING TO DO IS TO TAKE A PERSONAL, INDIVIDUAL CHOICE AND TURN IT INTO A LEGISLATED ONE. SO WE ESTABLISH A SYSTEM THAT AT ANY GIVEN TIME, INDIVIDUALS OR GROUPS CAN INITIATE LEGAL

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ACTION AGAINST ANOTHER INDIVIDUAL OR GROUP OVER WHAT THEY ARE WATCHING, READING OR POSSESSING. THE LOGIC OF THIS BILL AND SOME OF THE SUPPORTERS ARE UNIQUE TO SAY THE LEAST.

IN A TIME WHEN A VAST NUMBER OF AMERICANS ARE SAYING THAT THE GOVERNMENT IS TO INTRUSIVE INTO OUR LIVES, ALONG COMES A BILL THAT INTRUDES ON AN INDIVIDUALS BASIC RIGHTS. HOW CAN YOU HAVE IT BOTH WAYS. IF I WERE TO TAKE THE LOGIC OF READING PORNOGRAPHY OR FREQUENTING STRIP CLUBS AS A BASIS FOR COMMITTING RAPE. THEN I WOULD ARGUE THAT THE LEGISLATURE SHOULD SERIOUSLY CONSIDER BANNING ALL CURRENCY AND BANKS. WHY? BECAUSE AN INDIVIDUAL CHOOSES TO ROB A BANK, CONVENIENCE STORE OR AN INDIVIDUAL BY THE FACT THAT THEY MAY HAVE IN THEIR POSSESSION, MONEY. SO THEREFORE MONEY IS EVERYWHERE ENTICING THESE INDIVIDUAL TO COMMIT A CRIME. SO THE ONLY WAY TO STOP THE CRIME IS TO REMOVE THE SOURCE, MONEY.

NOW DOESN'T THAT SOUND A LITTLE RIDICULOUS. OF COURSE, BUT THE ONLY DIFFERENCE IS THAT I SUBSTITUTED MONEY IN THE PLACE OF PORNOGRAPHY, STRIPPERS, OR SEX.

THE SUPPORTERS OF THIS BILL CONTEND THAT SO-CALLED "SOFT-CORE" PORNOGRAPHY SUCH AS PLAYBOY, PENTHOUSE OR PLAYGIRL MAGAZINES OR R-RATED MOVIES WOULD NOT BE EFFECTED BY THIS LAW. I READING THE LAW

I COULD NOT FIND ANY SECTION, CLAUSE, SUB-SECTION, ETC., THAT READS: THE FOLLOWING PUBLICATIONS, TYPE OF MOVIES, VIDEOS, ETC., ARE EXEMPT FROM THIS BILL. IT DOESN'T EXIST. A CASE IN POINT: LINCOLN COUNTY MONTANA, ENACTED LOCAL LEGISLATION SIMILAR TO THIS BILL. SHORTLY AFTER ENACTMENT, A SMALL BUSINESSMAN IS ARRESTED FOR SELLING OBSCENE MATERIAL: PLAYBOY, PENTHOUSE, ETC. SUBSEQUENTLY, THE BUSINESS OWNER WAS TRIED AND ACQUITTED OF THE CHARGE. THE POINT IS, HOW MUCH TIME, MONEY AND EFFORTS WERE PUT INTO A TRIAL THAT SHOULD HAVE NEVER BEEN NEEDED. THIS BILL WILL ONLY SERVE TO BRING TO THE ALREADY OVERBURDEN JUDICIAL SYSTEM MORE FRIVOLOUS AND UNNECESSARY LITIGATION.

THE PREMISE OF THE AMERICAN ECONOMY IS SUPPLY AND DEMAND. I WOULD ARGUE THAT THIS UNTO ITS SELF SHOULD BE ENOUGH TO GAGE THE "COMMUNITY STANDARD" AS DEFINED IN "MILLER VS CALIFORNIA." IF A COMMUNITY FINDS THAT CERTAIN MATERIAL IS UNACCEPTABLE AND INDIVIDUALS IN THE COMMUNITY DO NOT BUY, RENT OR OTHERWISE USE THE MATERIAL, OR THE NUMBER OF INDIVIDUALS BUYING, RENTING OR USING THE MATERIAL IS NOT SUFFICIENT TO MAKE THE ITEMS COST EFFECTIVE, THE BUSINESS OWNER WILL SOON DISCONTINUE CARRYING THE PRODUCT. I ALSO BELIEVE THAT EACH INDIVIDUAL OWNER OF A BUSINESS HAS THE RIGHT TO CHOOSE WHAT TYPE OF PRODUCTS THEY CARRY. I DO NOT KNOW MANY INDIVIDUALS WHO GO INTO A STORE A FORCE AN OWNER TO CARRY ITEMS

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THAT THE OWNER DOES NOT WISH TO CARRY. AS FAR AS I CAN SEE, NO ONE IS FORCING ANYONE TO PATRONIZE AN ADULT BOOK STORE, A MAGAZINE SHOP OR A BAR WHICH FEATURES EXOTIC DANCING.

HAS ANYONE EVER ASKED AN INDIVIDUAL EMPLOYED IN THE ADULT ENTERTAINMENT INDUSTRY IF THEY CHOSE THE OCCUPATION OR WERE COERCED INTO IT? I HAVE AND TO A PERSON, THEY HAVE ALWAYS INDICATED THAT THEY CHOOSE THE OCCUPATION OUT OF THEIR OWN FREE WILL. I AM NOT SAYING THAT COERCION DOES NOT EXIST, BUT CONVERSELY NOT EVERYONE IN AN ADULT VIDEO, INCLUDING SADOMASOCHISM OR BONDAGE VIDEOS, ARE THERE AGAINST THEIR WILL. PEOPLE MAY NOT FIND THIS TYPE OF SEXUALITY APPEALING TO THEM, BUT STATISTICS DO INDICATE THAT "AVERAGE" PEOPLE IN THIS COUNTRY DO ENGAGE IN THIS FORM OF SEXUAL EXPRESSION. WE ALREADY HAVE LAWS ON THE BOOKS THAT COVER THE ISSUES OF CHILD PORNORGAPHY, KIDNAPPING AND OTHER RELATED OFFENSES. PEOPLE CHOOSING TO PURCHASE PUBLICATIONS, VIDEOS, ETC., OF CONSENTING ADULTS ENGAGING IN VARIOUS ACTS FOR ENTERTAINMENT OR EDUCATIONAL PURPOSES SHOULD BE ENTITLED TO HAVE THOSE ITEMS AVAILALBE. AN INDIVIDUAL OR EVEN A GROUP OF INDIVIDUALS MAY FIND THE SUBJECT MATTER OFFENSIVE TO THEM, BUT THAT GROUP SHOULD NOT BE ABLE TO IMPOSE THEIR SET OF BELIEFS ON ANOTHER.

IF AS SOME OF THE BACKERS OF THIS BILL CONTEND THAT THIS IS A "GET TOUGH ON CRIME" BILL, I WOULD POSE THE FOLLOWING QUESTION. HAVE WE, AS A SOCIETY, NOT LEARNED FROM OUR OWN HISTORY? A QUICK LOOK BACK TO THE EARLY 1900'S IS A PRIME EXAMPLE OF AN ATTEMPT TO LEGISLATE MORALITY UNDER THE GUISE OF PROTECTING THE INNOCENT PEOPLE OF THIS COUNTRY. I SPEAK OF THE ERA KNOWN AS PROHIBITION. THE PROPONENTS OF THIS LEGISLATION SPOKE OF MANY OF THE SAME CONCERNS THAT PROPONENTS OF HB 83 HAVE EXPOUNDED UPON. A GREAT ILL IS PRESENT IN OUR SOCIETY, IT IS DESTROYING THE FAMILY, UNDERMINING THE GOOD OF THE COUNTRY AND PREYING ON INNOCENT VICTIMS. IF WE LEGISLATE THIS GREAT ILL FROM SOCIETY, THE COUNTRY WILL PROSPER AND EVERYONE WILL BE SAFE. THIS DESCRIPTION MAY BE VERY BROAD AND POSSIBLY OVER-SIMPLISTIC, BUT ONE UNDERLYING OUT-GROWTH OF THE PROHIBITION ERA WAS ENTRENCHMENT OF ORGANIZED CRIME IN THIS COUNTRY. I USE THIS CORRELATION AS AN ATTEMPT TO INDICATE THAT WHILE I HAVE NO PROOF EITHER SUPPORTING OR CONTRADICTING ORGANIZED CRIME'S INVOLVEMENT IN THE ADULT ENTERTAINMENT INDUSTRY IN THIS COUNTRY, I DO BELIEVE THAT WHEN YOU BEGIN TO BAN A COMMODITY THAT HAS A SUBSTANTIAL SUPPLY AND DEMAND FACTOR, THE ESTABLISHMENT OF A BLACK MARKET LOOMS AS DEFINITE POSSIBILITY. AND WITH A BLACK MARKET COMES ORGANIZED CRIME. I FIRMLY DISAGREE WITH THE CONTENTION THAT THIS BILL IS A GET TOUGH ON CRIME BILL. THIS IS AN ISSUE OF MORALITY. TO ME MORALITY IS TO A GREAT DEGREE AN INDIVIDUAL CHOICE. HISTORY HAS

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SHOWN TIME AND TIME AGAIN WHAT PEOPLE ARE CAPABLE OF IN THE NAME OF RELIGION, MORALITY AND THE LIKE.

IN CLOSING, I WOULD LIKE THE MEMBERS OF THE SENATE JUDICIARY COMMITTEE TO CONSIDER THE FOLLOWING:

1): ALL THE INDIVIDUALS PRESENT AT TODAY'S HEARING SHOULD BE CONSIDERED "AVERAGE" PEOPLE.

2): AMONG THESE AVERAGE INDIVIDUALS PRESENT HAVE YOU HEARD CONCLUSIVELY THAT THERE IS ONLY ONE INTERPRETATION OF WHAT IS OBSCENE?

3): IF EVERYONE PRESENT TODAY WOULD BE HONEST, WHAT PERCENTAGE OF THE PEOPLE HERE WOULD SAY THAT THEY HAVE EITHER ON A REGULAR, SEMI-REGULAR, RARELY OR NEVER HAVE LOOKED AT AN ADULT MAGAZINE, VIDEO, MOVIE OR VISITED AN CLUB? THE ANSWER MAY SURPRISE THE COMMITTEE.

4): IF THIS BILL IS PASSED INTO LAW, WHAT WILL THE NEXT STEP BE? WILL YOU BE ASKED TO DETERMINE IF J.D. SALINGER'S "A CATCHER IN THE RYE", MARK TWAIN'S "HUCKLEBERRY FINN", OR JOHN STEINBECK'S "GRAPES OF

WRATH" ARE OBSCENE OR QUESTIONABLE AND SHOULD BE BANNED FROM PUBLIC AND SCHOOL LIBRARIES? ALL OF THE ABOVE BOOKS, WITHIN THE LAST TEN-YEARS HAVE BEEN BANNED FROM LIBRARIES IN VARIOUS PARTS OF THIS COUNTRY. DON'T ASSUME THAT IT CAN NOT HAPPEN IN MONTANA.

I CLOSE BY SAYING THIS IS JUST ONE "AVERAGE" PERSON'S OPINION. THANK YOU FOR YOUR TIME AND CONSIDERATION.

(1) JACOBELLIS V. OHIO, 378 U.S. 184 (1964)

(2) D.H. LAWRENCE, "PORNOGRAPHY AND OBSCENITY," IN DIANA TRILLING, ed., "THE PORTABLE D.H. LAWERENCE" (NEW YORK: VIKING, 1947), p. 646.

Clark

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 30
DATE 2-8-95
BILL NO. HB 83

2/8/95

RE: HB 83 (Obscenity Bill)

Thank you for the opportunity to share my thought and concerns with you today.

My name is Verl Clark. I live in Bozeman. I own a Film Buying Agency there that represents 35 different independent theatre owners through Montana and the western States. I have been in the theatre business since 1973 and have been a film buyer since 1975

I am married and have 2 kids ages 7 & 9. I am very concerned about their welfare and the affects todays society has on them. I also realize that their welfare depends on me and the environment I create in my home

There are many reasons to vote against HB 83. Please consider this.

Most theatre owners in Montana have been running their theatres for a long time. These "mi + Pa" operations are involved in and concerned about their communities. This is a self governing industry, through the MPAA that goes out of its way to provide information about movies and there ratings so concerned and responsible parents and adults can make intelligent choices.

HB 53 places these theatre owners in fear of operating their legitimate businesses because of the whims of a few so called "average people". HB 53 creates an opportunity for anyone to challenge any movie exhibited in a theatre

The fear is not that these owners will go to jail or that they will be fined, because we don't even no if the law will be constitutional. The fear is the economic burden they will face defending themselves against legal action brought by some misguided "average person"

EXHIBIT 30
DATE 2-8-95
HB 83

The fear is that some members of a community may want certain artistic films, while other members of the community ~~etc~~ will bring legal action against the owners for exibiting them.

You may think that this is impossible and that the intention of the law is not to bring hardship to legitimate theatre owners. The reality is you can't control the negitive impacts caused by HB 83.

The current obscenity law in Montana is more than adequate and there is no need to expand it and limit personal adult freedom. Please, we do not need more ~~laws~~ unnecessary laws.

Sincerely,

Van Clark

Clark Film Buying
President

EXHIBIT NO. 31
DATE 2-8-95
HB 83

MONTANA CONSTITUTIONAL CONVENTION
STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

FEBRUARY 8, 1995

SENATE JUDICIARY COMMITTEE

TESTIMONY OPPOSING HOUSE BILL 83

REVISING THE CRIME OF OBSCENITY
BY REDUCING THE RIGHTS OF ADULTS TO RIGHTS OF CHILDREN

I am Bob Campbell, a 1972 Constitutional Convention Delegate and the author of the Freedom of Expression provision in Article II, Section 7 and the Right of Privacy in the Montana Constitution.

Freedom of Expression is a separate and distinct right in Montana and it is the cornerstone of our Freedom of Speech and Freedom of the Press also guaranteed in that section.

HB 83 is the most serious violation of our Right of Expression ever introduced and seriously considered by this or any previous legislature. In addition to its unconstitutionality, it must be given a Do Not Pass for the following reasons:

1. Our present crime of Obscenity forbids the public display or transfer to minors of any obscene material. Its final form was approved by then Attorney General Marc Racicot. It protects the public from being subjected to offensive material while respecting the Expression and Privacy rights of others.

2. HB 83 is asking you to abolish the rights of adults by only allowing them to read, view, or transmit on their computer only that which is now lawfully possessed by children. They want you to commit the criminal justice system to accomplish their agenda, allowing in Montana only what is compatible with their religious beliefs.

3. Law enforcement has limited resources and cannot respond to every complaint that would arising under the wording of HB 83. It is unenforceable for the officer and the County Attorney who must devote their efforts to their first priority, protecting public safety.

4. There is no scientific studies proving that reducing the availability of pornography will reduce the number of men sent to prison. If HB 83 is already the Federal law in Montana, we should ask that it be vigorously enforced rather then make all Montana adults criminal under this law and selectively prosecute a few in each community.

HB is unconstitutional, unenforceable, unnecessary, and would generate years of expensive litigation for counties as well as adults who will lose their rights under this bill.

PLEASE VOTE DO NOT PASS ON HB 83.

Bob Campbell

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 32
DATE 2-8-95
BILL NO. HB83

HB 83

Margaret C. Hollow
428 Washington Drive
Helena, Montana 59601

2/7/95

I just think you should know that HB83 is not the cure for readers of pornography which Rep. Jack Herron seems to think it will be. Dallas Erickson says it is a crime bill. It isn't either one of these 2 things.

Crime is committed by degenerates, sexual perverts, psychopaths, ignorance, desparate folks, etc. Not by your run-of-the-mill citizen who would be most affected by this bill.

Criminals have no trouble getting dope, firearms, pornographic materials, you name it! They can get it! We need cures for these folks, not restrictions on the majority of the population.

Please don't penalize honest businesses and individuals - we don't deserve it. Margaret C. Hollow

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 33
DATE 2-8-95
BILL NO. HB83

HB 83
Senate Judiciary Committee
Testimony of Charles W. Walk
Montana Newspaper Association

Mr. Chairman, members of the committee, for the record my name is Charles Walk. I am executive director of the Montana Newspaper Association which represents 75 Montana newspapers, including all 11 dailies and 64 weeklies.

I am here today in opposition to HB 83.

I would like to assure members of the committee that Montana's newspapers never have been, are not now and do not plan to be in the future, purveyors of obscenity or pornography.

But we HB 83 as an all-encompassing and over-broad attempt at legislation which strikes at the heart of free expression and could result in unwarranted censorship in nearly every form of expression.

I am not here today to hide behind the First Amendment. I understand that the U.S. Supreme Court has said that obscenity falls outside the pure protection of the First. But I would remind the committee that the court also has constantly required that regulations on the sale and distribution of obscene materials must be narrowly defines by contemporary community standards.

I believe HB 83 goes far beyond what is needed and preferable in a free society.

I think existing Montana legislation — which some of you may recall has been hammered out in long and difficult sessions in this very chamber six and two years ago — is adequate and reasonable protection for Montanans.

I would suggest that there is great risk of errors of excess in both prosecution and jury results involving HB 83. I am also concerned that the harsh penalties are excessive and unreasonable.

I am not here to bash the bill sponsor or the bill's supporters. They are heading in a direction they believe is right and important. I do, however, respectfully disagree with the thrust of the legislation on the basis that it is unnecessary.

I urge you to give this legislation a "do not pass" from this committee.

League of Women Voters of Montana

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 34
DATE 2-8-95
BILL NO. HB 83

WRITTEN TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS

Senate Judiciary Committee
10:00 a.m., Wednesday, February 8, 1995
House Bill 83 by Herron

The League of Women Voters has always been a strong supporter of individual rights, and opposed to government intrusion into private affairs. Although the State of Montana has infrequently had problems regarding pornography and obscene material comparatively speaking, when such problems arise, individual citizens are quite capable of making their own decisions on such material without government interference. House Bill 83 if enacted would take away individual citizen's rights to read and view what they deem appropriate for their own taste. In short, this is what has been considered an unnecessary intrusion on and "taking" of one's freedom to make personal choices. We suspect that members of this committee would object to the idea of being told what they could or could not read or see. We urge you to think very carefully about any legislation that impinges on the rights of citizens to determine for themselves what they do or do not wish to read or observe. The League of Women Voters believes that the judgement of Montana citizens is sufficiently sound to allow them to make their own decisions. So we hope you will oppose legislation that restricts Montanans' freedom with regard to what they read or chose to observe.

In addition, the League of Women Voters of Montana is also concerned that the cost of administering and enforcing this unnecessary legislation, will be a major fiscal burden; one the tax payers should not be asked to bear. Furthermore, it appears that the regulations imposed by House Bill 83 would create unfunded mandates for lower levels of jurisdiction.

Censureship and government control of private, individual choices are serious matters, and we believe you should weigh very carefully, the full impact, before embarking on the path of censureship and restriction contained in House Bill 83.

The League of Women Voters of Montana opposes House Bill 83 and urges a do not pass recommendation by the committee on this measure. Thankyou.

Chris Imhoff
Legislative Chair LWVMT

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 35
DATE 2-8-95
BILL NO. HB 83

HELENA NEWS INC. Periodicals / Paperbacks

1515 Carter Dr.
P.O. Box 6017
Helena, Mt. 59604

February 8, 1995

Senate Judiciary Comm.

Dear Senators,

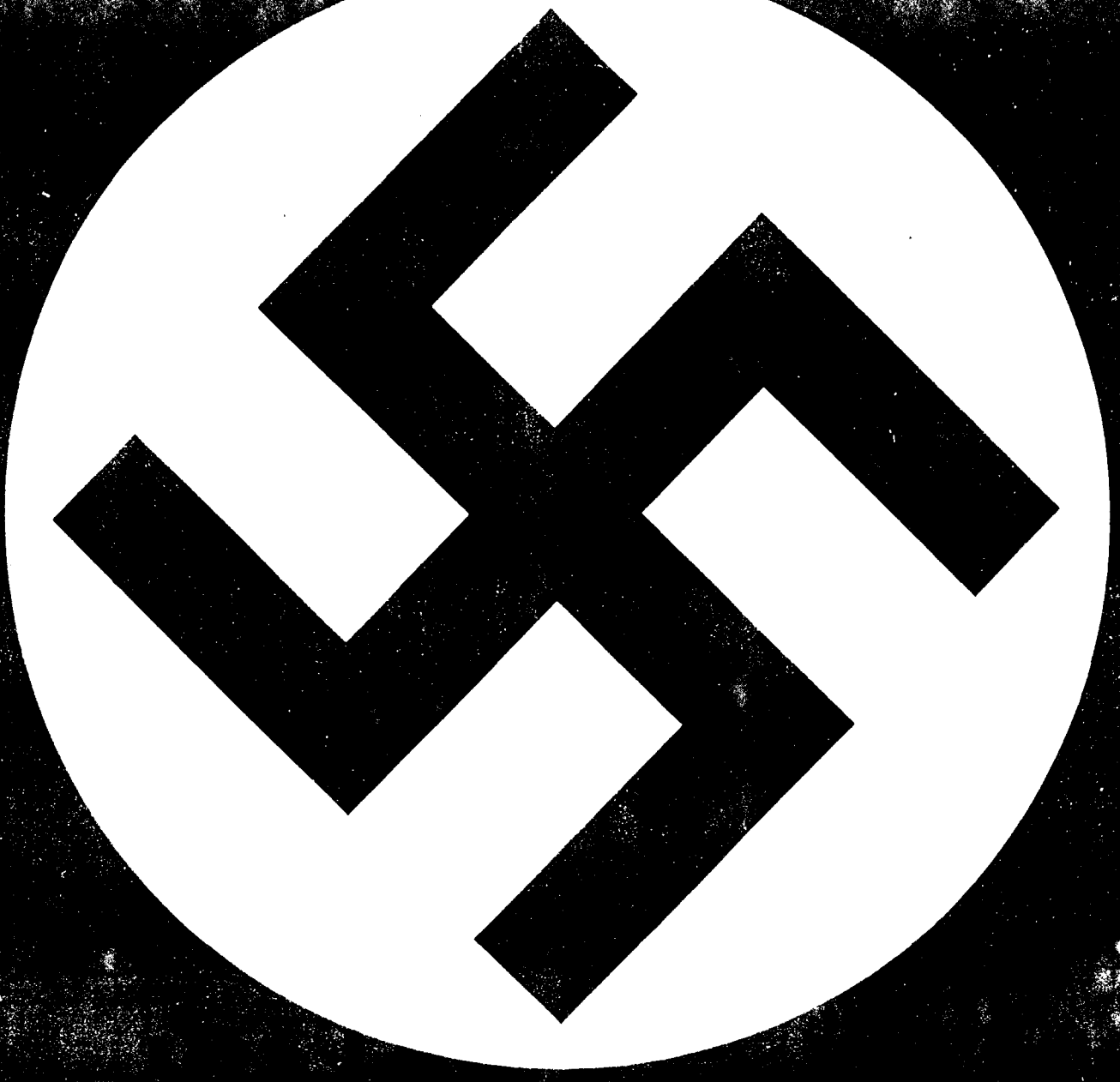
My Name Is Bob Hollow, I am Here to voice my objection to HB 83. My Wife and I own Helena News, Inc., a local periodical and paperback distributor. This a busines that I purchased from my father who began distibuting magazines in Helena in 1939. We are not a crime family nor do we have any connection to organized crime.

HB 83 would seriously impact our abilty to distribute the magazines we now offer our customers. Cosmopolitan, Playboy, Rolling Stone, Vanity Fair, Outdoor Life and even Sports Illustrated have been found by some in our community to be obscene. We are a small business that cannot afford legal costs for distributing publications that may offend a few who are not required to buy them. Our customers are free to make their own choices, and their standards determine our sales.

I commend those infavor of HB 83 for exercising your freedom to voice your opinion. I must also support the right of our customers to choose magazines they buy and read. Helena News, Inc. would like to continue to provide our customers with publications concerning lifestyles and sexuality as well as politics and religion.

Sincerely,

Bob Hollow



Why not let somebody else think for you?

You don't have to leave America to find people who are willing to do your thinking for you. Right now, some Americans are making important decisions about what you should be allowed to read and see and hear. That means you don't have to think as much.

These Americans want to make rules about what television programs you may watch, and what books and magazines you may read. Rules just like the ones they had in Nazi Germany and have today in Cuba, Iran and the Soviet Union.

If these Americans succeed in their efforts to censor television programs like *Mash* and *The Day After*, magazines like *Cosmopolitan*, *Penthouse* and *Playboy*, and books like *Ulysses*, *Catcher in the Rye* and *Huckleberry Finn*, our lives will be a little less complicated. And a lot less free.

As an American, you have the freedom to think for yourself and say No to censorship. Say it today—tomorrow may be too late.

Freedom is everybody's business.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 36
DATE 2-8-95
BILL NO. HB83

HB 82 a new low

I thought I had heard it all, but the introduction of House Bill 82 by Jack Herron and the religious right stoops to new lows in an attempt to undermine First Amendment and freedom of expression rights in this state. I am aware there is a growing movement to return to older value systems, but when the voters rebelled in November, they did not give Mr. Herron and his supporters carte blanche to take us back to the Victorian age of chastity belts and public lynchings.

It is particularly ironic that the politicians who support this bill would go so far as to wear white ribbons as a symbol of "purity." What is this? Some kind of joke? Such tomfoolery is tantamount to giving Heidi Fleiss a white wedding dress. I would like to see a poll conducted in which any reasonable person would equate "purity" with politicians. On the contrary, they should be donning black ribbons to symbolize the death of our free society as we know it. This is the same bunch of hypocrites who decry abortion rights and then go out and shoot people in the name of their cause.

It is one thing to try to impose one's value system on others through dissertation and protest, but it is quite another to attempt to legislate the most basic rights of our constitution away from us. Our elected officials have only been in office a short time and they have already shown us that they still didn't get the message. Get out of our private lives and get on with the work of balancing the budget and reforming government. Quit wasting our time and money tinkering with that which is none of your business.

Donald H. Kern
1805 Joslyn Street No. 89

IR 1-20-95

Jean 2/8/95
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 37
DATE 2-8-95
BILL NO. HB 83

The Potential for H.B. 83's Effects on Sex Education in Montana

We are faculty who teach ***Human Sexuality***, a lower division, undergraduate class at the University of Montana. This course is not a degree requirement for most students, though it does meet general education requirements for some. The class is enormously popular: every term it has a waiting list. It is capped at 230 students, the capacity of the lecture hall. Individuals who take the course range in age from 18 to 65, though the class is predominantly under age 25. All topics relating to sexuality are covered in the course: sexual anatomy and physiology, gender roles, sexuality research, lifespan sexual development, heterosexuality and homosexuality, pregnancy and prenatal development, birth and lactation, birth control, love and relationships, sexually transmitted diseases, the sexual response cycle, pornography, sexual deviancy, sexual assault, incest and related family-systems issues. We frequently see former students in Missoula and elsewhere in Montana. Years later, they report enthusiastically that ***Human Sexuality*** was one of the best and most useful courses they took during their college years.

We are deeply concerned about the implications of House Bill 83 for sex education in Montana. Repeated surveys of our students at the onset of the course and over the past 15 years (approximately 3,500 individuals) reveal that it is rare for students to learn about sexuality other than through conversations with friends (who are likely to be as ignorant as they) or through magazines and books (likely to have a biased and not always informed perspective). It may interest readers to know that among females in our course, 20% report that they learned sexuality information from parents, while an even more abysmal 8% of males learned about sexuality from parents. Information about sexuality from religious sources is basically non-existent, in the range of one to three percent reporting having received sex education from their churches. Thus, for the majority of our students, accurate information is difficult to come by outside of educational institutions and groups; that is, K-12 and higher education, as well as community organizations offering sexuality education.

What might be the effects of H.B. 83 on sex education in Montana? Potential effects are many. First, there are difficulties with the vague definition of obscenity. Obscenity occurs in a context and is also in the eye of the beholder. For example, a photograph of male genitalia on the front page of the *Missoulian* would offend many. The same photograph used in a college course for the purpose of discussing male sexual anatomy may have another effect. According to H.B. 83, Section 2bi/ii, obscenity is defined according to the "average person, applying community standards." Just who is this "average person?" There may be more than an occasional student enrolled in our course for whom photographs or drawings of genitalia are initially offensive, yet it is impossible to teach responsibly without reference to such visual aids. What about the student who, without permission, brings a friend to class or the individual who simply stops in without enrolling? These "average" persons may not be desensitized to public, open discussion of the sexual response cycle or the appearance of genitalia, for example, and be deeply offended. Under section 1a, such discussions or visuals would fall in the category of "presenting" or "exhibiting" obscene material. As the bill is written, the offended individual(s) need only file a complaint with legal authorities. Presumably the county district attorney would then make a judgment about bases for prosecution. It would be up to the educator charged to prove a lack of prurient intent and that the material was not obscene--very costly, demoralizing, and time-consuming. A human

sexuality textbook that has sexually-explicit diagrams or photographs that are offensive to some and was "imported" into the state, could condem. he course instructor to prosecution under this bill (with a maximum fine of $50,000, ten years imprisonment, or both). In fact, according to this bill (Section 4) if material exists that is "alleged to be obscene if there was no trial," (*what* material and *who* alleges that it is obscene and *who adjudicates* without a trial?), such material may be mandated into the possession of law enforcement officials for destruction. The implications of this kind of seizure are appalling. It smacks of book-burning and gives unusual power to an individual or group of individuals who make the allegation of being offended. Because sexuality is a difficult and volatile topic today, it is impossible to teach it without offense to some individuals and groups. It leaves the sex educator very much at the whim of local law enforcement, judiciary, and particular interest groups. While participation in our course and other avenues of sex education is voluntary, the bill makes no provision for same. Simple exposure of a consenting adult to obscenity (as defined by the values of the "average" beholder) is sufficient for prosecution and intimidation.

H.B. 83 has the potential to muzzle sexuality education in Montana. Repeated surveys reveal that citizens overwhelmingly support its inclusion in publicly-funded educational curricula. The topics raised in sex education curricula are of vital importance to society. It cannot be taught without reference to material that some will find offensive. It casts a wide net, capturing not the perpetrators of "crime" it intends, but average citizens and educators. It asks that the judicial system be used to arbitrate the qualities of material made available to consenting adults in any setting. It enlarges the definition of criminality to those whose intent is otherwise. It provides a means to the demise of sex education. With the resultant ignorance, we will have more difficulty insuring that all pregnancies are planned and wanted, with confronting the horrible toll of sexually-transmitted diseases, sexual assault and incest, with modifying everyday poor choices and difficult relationships, and with human suffering and its profound expense to society.

Don Jenni
Professor, Biological Sciences
University of Montana

Cathy Jenni
Associate Professor, Educational Leadership & Counseling
University of Montana

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 38
DATE 2-8-95
BILL NO. HB 83

I understand I can fax my testimony regarding HB 83, so here it is:

I oppose HB 83. I believe the decision to read and view various materials is mine to make and mine only; government has no right to make these decisions for me.

The most obvious question regarding a ban on obscenity, of course, is: who decides? The police? The county attorney? A ban on pornographic material is nothing less than an enforcement nightmare. In Canada, which has a similar law banning obscene and pornographic materials, the enforcement problems are numerous. For example, American cartoonist Matt Groening, creator of "The Simpsons," has had his material seized at the border. A health guide written for people with AIDS also failed to make it past the Canadian censors. And ironically, even works by Andrea Dworkin, a strident anti-pornography activist, were confiscated by the Canadians.

I think this clearly shows the inherent problems in enforcing this type of law.

Further, there are no legitimate studies that prove a causal link between pornography and violence towards women. People who sexually assault women or children after reading or viewing pornography are NOT normal, well adjusted people who simply exercised a moment of bad judgment. They are criminals who will continue to rape and assault regardless of whether pornography is available. The belief that a ban on pornography will reduce the rate of sexual assaults is naive at best and dangerous at worst.

If there did exist a link between certain materials and violent behavior, then the Legislature would do well to consider banning the annual broadcast of the Superbowl in Montana, since there are informal studies that do show a link between the Superbowl and violent attacks on women.

Finally, I take offense at the notion that women need protection from men who might -- might, mind you -- be compelled to attack after viewing pornography. This assumption contradicts all the gains made on behalf of women's rights in the past generation.

I don't need or want the state Legislature deciding what I may read or view, and I don't believe Montana needs it or wants it either. Please vote no on HB 83.

Respectfully submitted,

Carlotta Grandstaff

Carlotta Grandstaff
844 Sleeping Child Rd.
Hamilton, MT 59840
406-363-4054

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 39
DATE 2-5-95

Attn: Senator Terry Klampe Re: HB 83

Testimony for the Senate Judiciary Committee ~~and state senators~~ HB 83

In what must be the ultimate act of censorship, Rep. Jack Herron of Kalispell recently stated the backers of HB 83 (the anti-pornography bill) have asked him not to talk to the media about the bill.

Herron, who sponsored the bill, should be able to tell Montana citizens why he believes it is necessary to regulate the lives of Montana citizens to the degree this bill attempts.

But in an interview, Herron said, although he sponsored the bill, he is "doing it for others. and added "This was not my choice."

Whose choice was it then?

Perhaps that of Montana Citizens for Decency through Law, a private, non-membership, contribution-seeking lobbying group headed by Dallas Erickson of Stevensville. Erickson claims the title of president of the MCDL and has a vice-president and secretary/treasurer listed on papers he files with the state each year but he has stated, in print, his group has no members.

According to newspaper interviews with Erickson, he claims his proposed law deals only with obscenity, which is illegal, but not pornography.

However, the MCDL articles of incorporation state very different purposes, specifically to:

"Create public awareness of the nature and scope of the problem of obscene or pornographic literature;

"To encourage the reading of decent literature;

"To expect enforcement of laws pertaining to obscene or pornographic literature;

"To encourage and promote publication and dissemination of constructive and positive literature, movies, plays, books, magazines, etc., which are possessed of social value and which constitute a step toward ultimate TRUTH; and to encourage the efforts of law enforcement and prosecuting agencies and others interested in preventing the sale of literature which contravenes the manners and mores of the average person in a given community. "

In newsletters and flyers put out by the MCDL are frequent requests for contributions and the following statement, "All donations are tax deductible to the extent allowed by law." Of course, the deduction allowed is zero, but that is not the impression left with the person who contributes and then may try to take the donation off his or her income tax.

The question has to be asked, who does Erickson represent and what are his motives? What are the next steps in his agenda? What will be the next series of laws the legislature will be asked to pass in the name of morality and "protection of women and children"?

In testimony about the bill before the house judiciary committee and on the house floor, Herron deferred questions to Erickson and the experts Erickson brought in to testify about the bill.

Herron also said he was "alarmed" at the number of women who protested his support of the bill, which he feels would protect them.

Perhaps those women who alarm Rep. Herron feel they are able to protect themselves and their families from the "danger" of obscenity. Perhaps those women feel less government interference in their lives is the choice their want to make. Perhaps those women feel morality and decency are values best taught in homes and churches not passed into state law by legislatures.

Erickson speaks of rampant pornography causing dramatic increases in sex crimes which leads to the need for this legislation. Statistics from the Montana Board of Crime Control over the last five-year reporting period do not bear out his contentions. The number has remained stable at between 1,400 and 1,500 reported crimes per year, while Montana's population has grown by 7.1 percent. Ravalli County's population has grown by 25 percent in the past decade but sex crimes have remained at eight and nine cases per year for the past three years following a drop from 10 and 13 crimes in the two years before that. Statistically, based on a growing population, that's a decrease in crime, not an increase— statewide and countywide.

The bill is too broad and vague for any possible enforcement without challenges. It can only cost the state — or local — governments more tax dollars defending it in courts of law. It interjects government into private homes where it has no place to go. It says government has the right to make moral decisions and judgments for adult citizens.

If the bill's sponsor cannot speak for it, no one else should. It deserves to be defeated. The agenda of a few self-styled keepers of the public morals should not lead the legislature into the mistake of attempting to legislate the morals and choices of adult Montanans.

Ruth Thorning

Ruth Thorning
Reporter
Ravalli Republic
232 West Main Street
Hamilton, Montana 59840

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 40
DATE 2-8-93
BILL NO. HB 83

NAME NICHOLAS BUGOSH

ADDRESS 1561 COLORADO GULCH DR., HELENA

HOME PHONE (406) 442-3646 WORK PHONE 444-3827

REPRESENTING SELF

APPEARING ON WHICH PROPOSAL? HB 83

DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

THIS IS NOT WHAT I WANT GOVERNMENT TO SPEND ITS TIME ON. HOW WILL IT BE ENFORCED? WHO WILL DETERMINE WHAT IS OBSCENE? THIS BILL HAS POTENTIAL FOR EXCESSIVE ABUSES. THIS BILL HAS GREAT POTENTIAL FOR ABUSE OF OUR FREEDOMS. I DO NOT SUPPORT PORNOGRAPHY, CHILD MOLESTING, ETC., ETC., BUT IF I JUDGE SOMETHING OBSCENE I SIMPLY DO NOT PURCHASE OR USE IT. PLEASE DO NOT VOTE FOR THIS ODIOUS LEGISLATION. PROPONENTS SAY THAT THIS WILL NOT EFFECT X, Y, OR Z; WHY NOT?? IT IS OPEN ENDED AND COULD BE APPLIED TO ANYTHING SOME PERSON DECIDES TO DEFINE AS OBSCENE.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

What else can parents do?

Parents are urged to learn as much about a film as possible *before* they permit their children to attend. Reading reviews and feature articles or speaking with your theatre manager and friends are good ways to gather information in addition to the ratings.

We are interested in *your* views. Please let your theatre manager know if you attend a movie theatre and have any questions with regard to how the rating system is being implemented.

If you want further information about the rating system please write:

The National Association of
Theatre Owners
4605 Lankershim Blvd., Suite 340
North Hollywood, CA 91602

or

The Classification and
Rating Administration
14144 Ventura Blvd., Suite 210
Sherman Oaks, CA 91423.

This brochure is brought to you by
the National Association of Theatre Owners
in association with your local theatre.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 41
DATE 2-8-95
BILL NO. HB 83

Everything You Always Wanted To Know About The Movie Rating System

What is the purpose of the rating system?

The movie rating system is a voluntary system sponsored by the Motion Picture Association of America and the National Association of Theatre Owners to provide parents with advance information on films, enabling the parent to make judgments on movies they want or don't want their children to see.

Do the ratings indicate if a movie is good or bad?

No, the system is not designed to serve the function of "critic." The ratings do not determine or reflect whether a film is "good" or "bad." The system is not intended to approve, disapprove or censor any film; it merely assigns a rating for guidance -- leaving the decision-making responsibilities to the parents.

Who gives the movies their ratings?

Parents give the movies their ratings -- men and women just like you. They are part of a specially designed committee called the film rating board of the Classification and Rating Administration. As a group they view each film and, after a group discussion, vote on its rating, making an educated estimate as to which rating most American parents will consider the most appropriate.

What criteria do they use?

The rating board uses the criteria you as a parent use when deciding what is suitable viewing for your child. Theme, language, violence, nudity, sex, and drug use are among those content areas considered in the decision-making process. Also assessed is how each of these elements is employed in the context of each individual film. The rating board places no special emphasis on any of these elements; all are considered and examined before a rating is given.

Is the rating system a law?

No, the rating system is strictly voluntary and carries no force of law. (However, some locations may be subject to state or local laws regulating the content of motion pictures.)

What do the rating symbols mean?

G **General Audiences -- All ages admitted.** Signifies that the film rated contains nothing most parents will consider offensive for even their youngest children to see or hear. Nudity, sex scenes, and scenes of drug use are absent; violence is minimal; snippets of dialogue may go beyond polite conversation but do not go beyond common every-day expressions.

PG **Parental Guidance Suggested -- Some material may not be suitable for children.** Signifies that the film rated may contain some material parents might not like to expose to their young children -- material that will clearly need to be examined or inquired about before children are allowed to attend the film. Explicit sex scenes and scenes of drug use are absent; nudity, if present, is seen only briefly; horror and violence do not exceed moderate levels.

PG-13 **Parents Strongly Cautioned -- Some material may be inappropriate for children under 13.** Signifies that the film rated may be inappropriate for pre-teens. Parents should be especially careful about letting their younger children attend. Rough or persistent violence is absent; sexually-oriented nudity is generally absent; some scenes of drug use may be seen; some use of one of the harsher sexually-derived words may be heard.

R **Restricted -- Under 17 requires accompanying parent or adult guardian (age varies in some jurisdictions).** Signifies that the rating board has concluded that the film rated may contain some adult material. Parents are urged to learn more about the film before taking their children to see it. An R may be assigned due to, among other things, a film's use of language, theme, violence, sensuality or its portrayal of drug use. Theatre owners and film critics are advised as to why the R rating was assigned; parents are therefore urged to contact their local theatres to learn why the rating board chose the R rating.

NC-17 **No Children Under 17 Admitted (age varies in some jurisdictions).** Signifies that the rating board believes that most American parents would feel that the film rated is patently adult and that children under the age of 17 should not be admitted to it. The film may contain explicit sex scenes, an accumulation of sexually-oriented language, and/or scenes of excessive violence. The NC-17 designation does *not*, however, signify that the rated film is obscene or pornographic in terms of sex, language or violence.

Is the NC-17 rating the same as an X?

Not exactly. NC-17 *is* CARA's new name for the old X rating -- but unlike the X, NC-17 is a registered trademark and cannot be self-applied.

Can a rating be changed?

Yes, the rules permit movie producers to re-edit their films and re-submit them in hopes of receiving another rating. Producers may also appeal a rating decision to the Rating Appeals Board, which is composed of men and women from the industry organizations that govern the rating system. A two-thirds secret ballot vote of those present on the appeals board may overturn a rating board decision.

Do all movies have to be rated?

No. Submitting a film is purely a voluntary decision made by the filmmakers. However, the overwhelming majority of the producers creating entertaining, responsible films do in fact submit their films for ratings. All five Classification and Rating Administration rating symbols have been trademarked and may not be self-applied.

Who enforces the ratings?

While the decision to enforce the rating system is purely voluntary, the overwhelming majority of theatres follow the Classification and Rating Administration's guidelines and diligently enforce its provisions.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 42
DATE 2-8-95
HB 83

MONTANA ASSOCIATION OF THEATRE OWNERS

TO SENATE CHAIRMEN & VICE CHAIRMEN AND OTHER MEMBERS.

I WOULD FIRT LIKE TO SAY THAT I DO NOT RUN ANY MOVIES THAT ARN'T G. PG. OR R. RATED. WE DO CONTROL WHO GOES TO WHAT MOVIES BY THEIR AGE.

I AM AGAINST THIS BILL BECAUSE WE ALREADY HAVE A CURRENT MONTANA LAW THAT COVERS THIS ISSUE. I DO NOT FEEL THAT THE LAW SHOULD BE EXPANDED TO LIMIT ADULTS TO SEE WHAT THEY WANT

SINCERELY
FROM

Rusty Sto

ROXY TWIN
HAMILTON MT

MATO

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 43
DATE 2-8-95
BILL NO. HB83

MONTANA ASSOCIATION OF THEATRE OWNERS

2/8/95

Sen. Bruce Crippen
Senate Judiciary Committee

Dear Sen. Crippen:

As a theatre owner, and a member of MATO, I oppose HB83 due to the fact that it is unenforceable and unneccessary, along with being too vague in its definition of "obscenity" and the "average person." This bill could cause undue legal complications for Montana's entertainment industry.

Mike Blakesley
Roxy Theatre
Forsyth MT

MATO

DANIEL R. ERVING AGENCY
311 9TH AVENUE, #2
HELENA, MONTANA 59601
(406) 449-4737

Professional Business Services

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 44
DATE 2-8-95
BILL NO. HB 83

FEBRUARY 8, 1995

Senator BRUCE CRIPPEN
CHAIRMAN, Senate Judiciary Committee
State Capitol Building
Helena, MONTANA

RE: House Bill #83

Dear Senator CRIPPEN,

I Represent the Montana Association of THEATRE OWNERS and the Montana CHAPTER VIDEO SOFTWARE DEALERS ASSOCIATION.

Both ASSOCIATIONS oppose House Bill 83.

Sincerely,

Dan Erving

Lobbyist

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 45
2-8-95
HB 83

MONTANA ASSOCIATION OF THEATRE OWNERS

2-7-95

Sen. Bruce Crippen
Chairman
Senate Judiciary Committee

Sen. Crippen,

I am opposed to House Bill 83 because I am convinced the current bill is adequate and does not limit adult reading, seeing, & hearing freedoms.

Thank you for your consideration

Dennis Kilpatrick
814 First Ave
Laurel MT 59044

MATO

EXHIBIT 46
DATE 2-8-95
HB 83

I am a manager
of a theatre. I two kids
12 + 10 I pay my taxes
and I do my community
service. I do not feel
I should have to defend
my self in the courts while
real criminals wait their
turn. The current law
works. This one doesn't.
STAN SMITH
Big Sky Cinema Dillon, MT

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 47
DATE 2-8-95
BILL NO. HB83

Polson Theatres
Phone (406) 883-5844
364 Shoreline Drive
Polson, Montana 59860

February 6, 1995

Senate Committee
Bill #83

As a citizen of Montana and an owner and operator of theatres in seven towns in Montana, I would like to register my opposition to House Bill #83.

First I am as opposed to hard core pornography as most citizens , and I would like to see it controlled, but I believe #83 is too broad and will have an effect on many morally concerned institutions and business: book stores, libraries, theatres, and video stores.

We are careful to choose movies, we consider appropriate as I am sure the legitimate business mentioned above select their product. Our customers may choose the type of movie of interest to them: family to adult fare, same as other business.

If this law goes into effect, we will further limit the choice of our patrons movies, for fear of prosecution, as will libraries, book dealers, and video stores. This is the beginning of removing freedom of expression from Montana.

There is also the threat of a very concerned citizen bringing a suit against our theatre, I am certain with our present choice of general release movies, we would never be convicted of breaking this obscenity, but the cost economically and publicly to our business is something we should not have to fear.

I believe the person committing the sex crime should be punished severely to discourage these crimes, not the general public by having their freedom of choice taken away. If every town in Montana was filled with hard core pornography shops then I might consider giving up my freedom of expression to fight such a problem, but that is not the case in Montana.

The most questionable item of this new law is the right of the individual areas of the state to choose to impose even stricter obscenity laws, this is truly unfair.

Please consider how unnecessary this law is when we already have many ways of punishing those whose obscene offences concern children, who the proponents of this law continually say they are trying to protect.

Sincerely,

Ayron Pickerill

Feb 6, 1995

Independent Marketing Edge
827 Blackmore Place
Bozeman, MT 59715
(406) 587-1251 Fax (406) 586-1571

The world's best theatre managers have an 'edge!'

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 48
DATE 2-8-95
BILL NO. HB 83

Members of the Senate Judiciary Committee
Montana State Senate
Helena, MT

RE: HB 83 (the Obscenity Bill)

Ladies and Gentlemen,

As a theatre owner a number of years ago I spoke against the passage of an obscenity bill. The senate, at that time, had the good sense to kill the bill. I was greatly dismayed and embarrassed at the ignorance the House showed in passing HB 83. I trust the Senate has a longer memory.

The issues and facts are the same now as they were back then. It is extremely difficult to define what is *obscene* because it is in the eye of the beholder. In the hearings last time around, a member of the house told the committee that he had no trouble defining it. In fact he had gone to the Circus Theatre and viewed pornography the previous night - the movie he saw was *The Towering Inferno* with an all star cast including Paul Newman. Others at the hearing laughed at the representative but the point was that, to him, the film was obscene! It didn't matter whether 'local community standards' dictated that the film was or was not obscene, to him it was and, as an adult, he had the right to attend the film, stay away from the theatre, write a letter to the company and the editor of the newspaper, or exert his rights in a number of appropriate ways.

Every state has laws against child pornography. Those laws have teeth. Prosecutors get convictions with them. Almost everyone agrees that these laws are necessary and good. *Obscenity* laws that try and protect adults from viewing what certain members in the community define as obscene, end up wasting your time, tax payers money, and the time of local law enforcement and county attorneys. Whenever a book store, theatre, video store, art gallery, night club, etc. is charged with obscenity the case goes to court. Occasionally they are found guilty and then they take it to a higher court and on and on until the case is thrown out or they are found not guilty. Convictions are practically nonexistent. Most obscenity laws (including HB 83) are found to be unconstitutional. The press surrounding an arrest and subsequent trials usually results in additional business for those that are charged - the opposite of what the bill was intended to do.

Montana's theatre owners do not have to ever worry about an MPAA rated film being declared obscene. Yet recent major films like *Disclosure* are obscene to some people. As an adult I have the freedom and right to attend or not attend. I, even as a member of a local obscenity board, do not have the right to determine what my adult neighbors decide to view.

Thank you for your consideration. I know you will make an intelligent choice.

Regards,

Dan Klusmann

Dan Klusmann
President

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 49
DATE 2-8-95
BILL NO. HB 83

8 February 1995

Letter submitted in opposition to HB (#82 and) #83.

Forever Young!

There are innumerable points that can and are being made about the contents of House Bills 82 & 83, which deal with Indecency and Obscenity.I am an artist who chooses to paint the nude figure as one of many varied subjects. After studying these two bills and attending the House committee hearing, I am convinced that both bills would negatively impact my artistic pursuits. The proponents at that hearing glossed over the effect these bills would have on the general populace as well as artists. HB #82 expands the definition of indecency making it applicable to private as well as public places. HB# 83 expands the definition of obscene then obligates the authorities to apply these standards to all adults as well as those under 18. HB #82 has been tabled because "it would likely be found unconstitutional." Since HB #83 contains the same stance as #82 regarding infringement of our personal freedom, it should not be passed either.As you give further consideration to this bill, ask yourselves whether the majority of your constituency wants their representatives to assume this paternalistic function.

I am enclosing copies of a portion of the newspaper articals which have appeared, and which are against passage of HB #83. They are submitted as testimony, and therefore should be reviewed as any letter submitted.

Lou Archambault
(P.O. Box 481, 601 Montana Ave. So.)
Helena, Montana 59624
(H. phone 443-8206)

Nov. 11 '94

MONTANA Art council. Sobiet.

Anti-smut crusader

Legislature to be asked to curb sales

HAMILTON (AP) — The man who led a successful push for obscenity laws in Ravalli County says he will take his crusade to the Montana Legislature.

Two county ordinances approved by voters this week make it illegal to distribute obscene material and to display material that would be harmful to minors. A third bans public nudity and public performances of actual or simulated sex acts.

Dallas Erickson, who heads Montana Citizens for Decency Through Law and who led the Ravalli County effort, said the Legislative Council has been researching bill requests from Rep. Jack Herron, R-Kalispell, for three laws that will essentially be the same as the county ordinances.

Erickson singled out two video rental businesses that offer films which he believes would be illegal under the new county laws, but said he was willing to wait and see whether they will voluntarily conform to the law.

"It's not like we're going to mount an all-out effort to enforce" the new rules, he said.

But if the merchants in question fail to comply, complaints will be filed and Erickson's anti-obscenity group may call for a boycott of the stores, he said.

Sheriff Jay Printz said the new laws will further burden his thinly stretched force. Offenses under the ordinances would be misdemeanors and they will get "low-priority status" in enforcement, the sheriff said.

If a complaint is made, Printz said, he will decide whether the material or action in question appears to violate the law and would then refer the matter to the county attorney for prosecution.

"We think that these are overbroad," Scott Crichton, state executive director of the American Civil Liberties Union, said about the Ravalli County ordinances.

"You've got anti-pornography ordinances already in place (at the state level) that seem to be working just fine," Crichton said. "What they're doing is asking government to become further involved in what citizens can and cannot be exposed to."

The rule banning distribution of obscene material requires judging material against "contemporary community standards" that likely would be contested in court in response to any prosecution.

Crichton said he doubts that Erickson would welcome any such court action while trying to get similar laws passed by the Legislature.

Larry Hale, whose Woodside Country Store was singled out by Erickson as a possible violator of the Ravalli County laws, said he is not happy about the fact that he has 10 adult videos available for rent at his store.

"Some of our regular customers asked us to put them in, so we did so in a very discreet manner," Hale told the *Missoulian* newspaper.

Hale said his decision to offer the movies was in large part prompted by competition, but added that he is uncomfortable with making judgments about his customers.

"I am not qualified to be a judge of whether they are right or wrong," Hale said.

to go statewide

Reasons to kill

AN IR VIEW

BILL SKIDMORE

The House on Monday tentatively approved House Bill 83, a measure designed to toughen Montana obscenity laws, by a narrow 53-47 vote.

The bill would make it a crime to provide or display obscene material to anyone, not just youths under 18. It would make it a felony to bring such material into the state, and it expands the list of misdomeanor offenses.

Many different arguments serve to explain why the House should kill the bill on final reading. Here are a few:

■ The constitutional issue. More than 20 years ago Montana adopted one of the most progressive constitutions in the nation. "No law shall be passed impairing the freedom of speech or expression," the document says. "Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty."

Much is made of the fact that some 45 states have obscenity laws similar to HB 83, but Montana's constitution simply precludes the strict sanctions the bill would place on adults in this state. Passing it may infuse some with a fuzzy, feel-good sense of sanctimoniousness, but does such a quixotic, sure-to-be-overturned law merit the Legislature's valuable time?

■ Effectiveness. One look at the size of the pornography industry in this country — a $10 billion industry by one estimate — should convince anyone that those obscenity laws boasted by 45 states are about as effective as the government's war on drugs.

■ Local options. State law already allows local governments to ask voters if they want anti-obscenity laws that are more stringent than state law. If community standards are the key to "what is obscene," than such decisions are best made on the local level.

■ Is HB 83 anti-crime? Many legislators appear to view the measure as an anti-crime bill. This view is not supported by the facts, unless inventing new crimes is somehow anti-crime.

Advocates contend pornography can lead a person to commit sex crimes, victimizing women and children. This fairy tale, long the province of the prim and proper religious right but recently championed by some feminists as well, contradicts reality.

Rapists are motivated by rage and hatred of women, not by passion. There's no evidence pornography has anything to do with their crimes. Likewise, child molesters are people unable to control their own sick needs, not weak-willed victims of dirty pictures.

Montana already has laws against such criminals, as well as stalkers, domestic abusers, and so on. Enforcement of those laws has a place on our anti-crime agenda; censorship does not.

As for the feminist view that pornography demeans women, we tend to agree. If asked, we'd advise women (and men) not to act in pornographic movies, or pose for explicit photographs. But we'd never dream of actually imposing our views on another person's freedom, just as we wouldn't want anyone to impose their views on ours.

■ Freedom of expression. If HB 83 fails to be an anti-crime bill, it certainly would succeed in stifling free expression and creativity. The bill is so broad as to include many legitimate forms of art, including most movies rated R. Would the bill mean porn police swooping down on a family at a video rental store picking up a movie for the kids and a little spicier one for after the kids are in bed?

At any rate, good, cutting-edge art of any genre is quite likely to offend somebody. Under HB 83, by golly, that somebody gets to protect us all from whatever sets his/her sensitive heart aflutter. We hope the Legislature protects us from such protection.

■ Finally, there is the issue of irony. The spectacle of a Legislature dominated by people who ran for office on a pledge to get government off our backs seriously considering HB 83 would, if not for the delicious irony, look a lot like a dirty picture.

EXHIBIT 1
DATE 2-8-95
HB 83

...EDITOR
...ASSOCIATE EDITOR
...EDITORIAL PAGE EDITOR

IR - Jan 23'95

What is obscenity?

YOUR TURN

We're all trying to balance our budgets these days, and the Montana Legislature is no exception. That's why I'm surprised the House of Representatives just passed a new obscenity bill which, despite good intentions, would cost us all a great deal and would not do its job.

Proponents of HB 83, "A Bill to Expand Montana's Obscenity Law," hope to nip sex crimes in the bud by outlawing the smut that leads to rape and pedophilia. According to the *IR*, Jan. 13, supporters pushed this bill to "protect society, especially women and children" from "obscene material (that) can lead to sex crimes."

I'M ALL FOR being protected from sex crimes, and I am among the majority who are deeply offended by smut. But how do we define obscenity in a way that doesn't rob us of an important part of our humanity? How can we separate what's dangerous from what's simply disturbing? Unfortunately, you can't outlaw disturbing pictures, not in a democracy.

And would you want to? Censors like to say that by applying "contemporary community standards," great art like Michelangelo's "David" would be acceptable. But how would you feel about that lovely, lively nude if you knew Michelangelo was a homosexual? Most of what we think of as great art today started out as a horror to contemporary community standards. In the 18th Century Vienna, avant-garde symphonies caused riots.

Art has power; words, performances, pictures, sculptures, magazines, films have power. They titillate. I can't read Donne or O'Connor or Steinbeck without feeling little rustlings in body parts I'm not supposed to name. You can't outlaw that power. You can legislate what people do with it.

THERE IS NO WAY to outlaw perverted smut without also robbing our culture of its liveliness, its honesty, its art. The Montana Legislature (not known experts on the meaning of art in society) has not succeeded in this subtle and difficult task.

I wish there were a way to outlaw everything that drives a pervert to assault another person. But perversion is in the eye of the beholder, and you can't outlaw the eye of the beholder. Criminologists who specialize in sex crimes know it isn't the smut-readers who attack; it's the frighteningly almost-normal, the psychotic who reads something abominable in the stuff of our everyday lives — children's clothes, women's shoes.

SO WHAT WOULD an expanded anti-obscenity law protect us from? Not from stalkers, not from domestic abusers, not from gun-toters or knife-wielders. Its definition of obscenity covers only nude bodies and sex; it doesn't even mention violence! Yet cops and criminologists all know that sex crimes are acts of violence, not sex. The law would protect us women and children from having to go see "Pulp Fiction" (shows excretory functions) or view Correggio's "Leda and the Swan" (beastiality). It would make Weiss's play, "Marat/Sade" quite illegal (bondage in bizarre costumes); I'd be fined for screening the "Last Tango in Paris," thrown in jail for writing erotic literature. Woops, I thought I was being protected?

What is this bill about, anyway?

I WAS ONCE SEXUALLY assaulted by a man who later, the cops told me, gave a remarkably honest confession. He did not learn to do what he did by reading girlie magazines or watching strip shows; he learned it in Vietnam, he said, blowing gooks' heads off. He only knew one strong thing about himself, and that was it. If I could have whipped out Goya's "The Disasters of War" it might not have gentled him but it might at least have let him know he was still human. Art has that power, which is partly why we sometimes want to be protected from it, too.

If this Legislature wants to protect women and children from harm, strengthen the anti-stalking law. Protect us from abusive relatives. Stiffen the consequences for sexual harrassment. Protect kids from getting beat up by people they trust. Address the violence committed with weapons in this state. HB 83 doesn't protect anyone from anything. It makes honest artists, writers, publishers, video store owners and gallery operators vulnerable to interference by the government for their values. That does violence to our democracy, and I think *that's* obscene.

KRYS HOLMES *of Helena is a free-lance writer.*

(FOR PASSAGE) IR- JAN 25 19

Arguments against the obscenity bill are refuted

I take strong exception to your recent editorial, "Reasons to kill the obscenity bill." I am on the judiciary committee which heard this bill and am a supporter. The rationale behind most of your arguments was thoroughly refuted in both committee and house floor testimony.

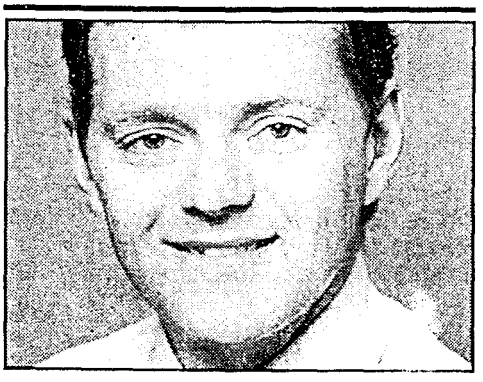
This bill makes Montana's obscenity law enforceable and makes it consistent with 45 other states. This improved language will allow local communities to enforce this statute if they so desire. Application of this bill in other states has been very successful in eliminating obscenity (pornography is not mentioned in the bill) from being so readily available. In fact torture videos are available in Montana but not in other states that enforce this law.

MONTANA BADLY NEEDS this bill to crack down on organized crime and other crimes against society. Innocent women and children used in these photos and videos are victims. Unsuspecting members of society who are the most vulnerable are victims. This material is almost always prevalent in the lives of rapists, pedophiles, and others committing heinous crimes against society. Proof of the correlation between obscenity and crime is extensive and unrefutable. How can you not call this a crime issue?

"OBSCENE" AS USED in House Bill 83, is material that depicts sex in a patently offensive manner and appeals only to the "prurient" (obsessive, shameful) interest in sex. This means violent and sadomasochistic material that involves pain and abuse would clearly apply. This is not about people making love, or Penthouse-type magazines. And no R-rated movies could be nor ever have been prosecuted under this bill's definition.

The constitutionality of this issue is settled beyond question. The United States Supreme Court ruled that "obscene material is unprotected by the First Amendment." It is absurd to call this "censorship" or an issue of free speech. Supreme Court

EXHIBIT NO. 8
DATE 2-8-95
HB 83



YOUR TURN

DUANE GRIMES, *a Republican from Clancy, represents Jefferson County in the state House.*

Chief Justice Warren Burger wrote, "to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historical struggle for freedom."

BESIDES, MONTANA'S constitution states that our free speech is limited by our "being responsible for all abuse of that liberty." Obscenity has always been considered an abuse of the liberty of free speech. The Montana Supreme Court holds that "the State Constitution's freedom of speech' or 'expression' clause does not provide greater protections than those afforded by the First Amendment's 'freedom of speech' clause" (for those that think it does).

Art censorship? Nobody in the committee hearing on this bill could tell us what an artist in Idaho (that has this same statute) can't do, that an artist in Montana can? This concern is simply unfounded. Even hard-core pornography which has minimal artistic value is protected under this statute.

MOST OF THE ARGUMENTS against the obscenity bill are really arguments against our current law anyway. We have a chance here to do something preventative about crime. That's why a majority of us in the House passed the bill. In a recent Gallup poll 80 percent supported a crack-down on hardcore porn. President Clinton has endorsed hard-core obscenity laws as well.

Don't let Montana be one of five "magnet" states for this stuff. Let's do what's right for the liberty of everyone in Montana society, not just those that condone criminal activity and profit from it by "demeaning" the First Amendment.

IR-Jan 25 2 of 3

Turning the rights of adults into those of kids

During the first day of the Legislature the Republican leadership promised less government and more individual freedom.

This commitment was tested by two bills introduced by the religious right of the Republican Party seeking to create a new crime of public indecency, HB 82, and an Alice In Wonderland rewrite of the crime of obscenity, HB 83.

THE HOUSE JUDICIARY Committee killed HB 82, which would have made nudity a crime and was clearly an embarrassment to the Legislature. However, on an 11-8 vote the committee sent the obscenity bill to the floor of the house where it passed by a narrow 53-47 majority. Twelve Republicans voted against it. It now goes to the Senate for a Judiciary Committee hearing then a Senate vote.

There is no question that HB 83 would bring a significant increase in government intrusion into the private lives of adults in Montana. The question is whether it is necessary.

WE ALREADY HAVE an obscenity law which prohibits public display of obscene materials and forbids providing them to minors. An adult in Montana is free to decide what to read or view as guaranteed by our Montana constitution's freedom of expression, speech, press and privacy.

The censorship proposal in HB 83 would transform the rights of adults into the rights of children by using the criminal law to prohibit adults from viewing what is now only restricted from children.

To appreciate the extent of the proposed control over your life, law enforcement would be expected to monitor all publications, exhibits, theatrical productions, video rentals, sales, photographs, motion picture film, videotapes, sound recordings, and representations on computer transmissions.

SUPPORTERS CLAIM that this censorship is necessary to reduce crime. Their logic is this: Because a high percent of men in prison have previously viewed pornography, a ban on pornography will reduce the number of men in prison. However, the percent of men in prison who have viewed pornography is probably the same as men not in prison. Causation has simply not been proven.

A censorship statute like this would be more at home in Utah. In fact, the out-of-state lawyer who wrote HB 83 said it has been enacted in Utah. If you ever wanted to live in a state where the legislature imposes religious beliefs on its citizens, you should move to Utah. But for me, I would rather breathe the fresh air of freedom in Montana than the stifling atmosphere of church domination in Utah. That's the same legislature that tried to censor cable TV before the federal courts had to remind them of the rights of others.

IF YOU ARE CONCERNED about this unprecedented censorship bill, HB 83, write your senator at the State Capitol, Helena, MT 59620 or leave a message at 444-4800.

More rights are lost by apathy than force of arms.

YOUR TURN

BOB CAMPBELL, *a delegate to the 1972 Constitutional Convention, has been a state employee living in Helena for the past 15 years.*

EXHIBIT 49
DATE 2-8-95
HB 83

IR - JAN. 25 3

Notes on the importance of being (oh, so) earnest

MARY SHEEHY MOE

What do you wear to an obscenity hearing? An earnest expression. That's what the Purity Posse wears as they speak of unspeakable things. And so do the free-speech firebrands appealing for the future of Art, Information, and the Constitution. Even the setting — the old Supreme Court Chambers — hushes. You're not supposed to laugh there.

But it's hard not to. When a slip of the tongue in the testimony against the nude dancing bill conjured up the vision of a woman clothed only in a thong and "pasties" — you had to snicker. Although everyone agrees that Butte's famous meat-filled pastries go great with milk and better with catsup, hardly anyone serves them with a G-string.

AND THE BROWN BAG testimony! One lady approached the committee holding a paper sack as if it were a soiled diaper. She had scoured Helena for obscenity, she announced (a dirty job, but *someone* had to do it), and she had found filth, revolting filth, the filth that was now in the bag.

I leaned forward eagerly — I mean, earnestly — to get a gander at the goods. But Pandora had scruples. Because of her earnest wish not to offend, because of the unsavory nature of the bag's contents, she could not compel the committee to view them. Instead, she would leave the bag on the table, and if at some break in the action, a committee member felt sufficiently fortified, sufficiently above the pull of prurient interest, then he or she could open the bag.

Ah, for the good old days when you could count on some loutish-looking representative from Anaconda to bring down the house by immediately requesting a 20-minute break. But no. Earnest, remember? The bag remained on the table, untouched.

THE OPPOSITION ALSO had a bag person, a counselor for sexual deviates, but his brown bag had more palatable filth. He pulled out the materials his clients used for their fantasies: a Mousercize video, a Sears catalog, and a variety of Barbi doll stuff.

There is much to be said for banning Barbi. I hadn't known that she appealed to perverts, but I've long suspected that she's trouble. Children who acquired their first notion of the feminine ideal from Barbi must find reality a shattering disappointment. And if you've ever stepped on a Barbi in the middle of the night in your bare feet, you know that the correlation between that experience and obscene expression is significant. Perhaps the Senate will amend HB 83 to address the Barbi menace.

THE MOST EARNEST talk at the house hearings, though, concerned protecting the vulnerable from the pernicious porn-addict. This bill isn't about censorship, the Purity Posse insisted; it's about the safety of women and children. After a full hour of this patronizing blather, you begin to believe you're on the Titanic II and expect at any moment to be herded into a lifeboat with white-ribboned women and their clean, blond children who will hate you to death out there in the filthy ocean because you should be paddling earnestly away from that ship sinking from the weight of a big brown bag that must not be opened ... but all you can do is laugh.

It's funny that in an era in which not an hour goes by without a child getting shot, we want to ban ... guns? No, magazines. It's amusing that a society that can't abide images of women in chains lives tolerably well with the prisons of poverty, discrimination and abuse that far more women occupy. It's a screamer that men who dismiss these complex women's issues are some of the Galahads behind this simplistic bill. And the real rib-splitter is that in the name of protecting "defenseless" women and children, we must all take on that powerless status, dependent on Big Daddy to determine what we can see and say.

NEXT SESSION, PERHAPS, we'll go equal opportunity and get earnest about protecting men ... from country music. After all, as the Posse would say, it "degrades them in every imaginable way." And that's just the lyrics! Add the nasal twang of hokey okies forcing their eyes to well with tears, and you have flat-out masochism. The correlation between country-western bars and parking lot violence is every bit as strong as the correlation between pornography and rape. Yes, banning country music is an idea whose time has come. Like the obscenity bill, it's the very least you can do for the ones you love.

MARY SHEEHY MOE *is a teacher at the Helena College of Technology who writes occasional columns for the IR.*

IR- JAN. 25, 95

Obscenity too broad

For those of you who have enemies who are artists or art collectors, here's your chance to put them away.

With passage of the revised obscenity law, HB 83, any person who exhibits images with human bodies is endangered. The law's intended target is pornographic abuses, but tragically it tries to attack a problem of violence and harassment with prohibitions against body imagery instead of abusive behavior. Are we to believe in this state that it's a God-given right to carry an assault rifle, but an image of a nude is too dangerous to allow citizens to handle?!

As a sculptor of the human form I'm under threat from the part of the law that prohibits exhibition of any obscene "statue." I've been a ravenous appreciator of beautiful images of the body all my life, and I know about pornographic magazines, films, videos and photographs. But I had honestly never heard of an "obscene statue" until I read this bill.

Our legislators would never have let that reference slip through unless they had something in mind. Unless I'm so naive that I'm missing the Rent-a-Lewd-Statue outlet, that reference refers to body imagery in sculpture, which I am totally guilty of producing and exhibiting all over this country and beyond! Of course my intent is far from prurient, but that doesn't matter under this law, the artwork needs only be "offensive" to "the average person" to make me a criminal. But that person is precisely who I intend to confront, and hopefully enlighten, with my artwork. Simple confrontation can easily be felt to be offensive by anyone who doesn't feel like challenging their cherished beliefs, and now they can have me, or even someone who exhibits similar artwork in their home arrested for it!

Please tell your senators to nix this misguided bill!

Tim Holmes
446 N. Hoback

EXHIBIT 49
DATE 2-8-95
HB 83

16 January 1995

Letter submitted in opposition to HB #82 and HB #83.
This same letter is currently being submitted to "Letters to the Editor", to all of Montana's major newspapers for publishing as soon as possible.

Forever Young!

There are innumerable points that can and are being made about the contents of House Bills 82 & 83, which deal with Indecency and

Obscenity.I am an artist who chooses to paint the nude figure as one of many varied subjects. After studying these two bills and

attending the committee hearing, I am convinced that both bills would negatively impact my artistic pursuits. The proponents at the

hearing mentioned nothing of the effect on artists; nor has anyone addressed the predominate effect these bills will have on all of

us, not just artists. HB #82 expands the definition of indecency then makes it applicable to private, non-public places as well as

public places. That's Big Brother intruding into our private lives and domiciles! HB #83 expands the definition of what is

obscene then applies these standards to all adults as well as those under 18. Adults would not be allowed to make there own free

choices. If you do not believe this legislation would effect you as a law abiding citizen read the new and "improved" definition of

obscenity. HB #82 has been tabled because it would likely be found unconstitutional." HB #83 contains the same attitudes as #82, yet

was passed by committee and is now before the House. I appeal to the concerned readership of Montana to voice this issue with your

representative- Adults are capable of making their own choices. Please give HB #83 a quick and total defeat.

Lou Archambault
(P.O. Box 481, 601 Montana Ave. So.)
Helena, Montana 59624
(H. phone 443-8206)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 50
DATE 2-8-95
BILL NO. HB83

8½ Washington Place
Helena, Montana 59601
February 8, 1995

Chairman
Senate Judiciary Committee
The Senate
Montana State Legislature
Helena Montana

Mr. Chairman and Committee Members,

I urge you to oppose passage of House Bill 83. Proponents of this bill want to censor free expression only they find offensive. Supporters of this bill are guilty of misinformation and faulty reasoning.

1. It is not true that pornography is rampant. Pornography, the depiction of sex acts, has been a normal part of human expression since the beginning of culture. Those who think it is rampant are those whose obsession, fed from guilt about bodily functions, makes them see "filth" everywhere.

2. It is not true that pornography causes rape and abuse. There is no correlation between the consumption of sexual descriptions and the urge to violate others.

A close correlation has been demonstrated , however, between militarization and rape. Sex crimes rose markedly during Desert Storm. Fascist Spain and the Ayatollah's Iran employed severe sanctions against pornographers, yet there is no indication that sexual assault decreased. Do we want Montana to be a police state controlling every common desire?

3. The committee should be aware that legislation such as this has its origin in an unholy alliance between radical feminists, such as Andrea Dworkin and Catherine McKinnon, and certain radical right religious groups.

Dworkin has publically advocated murdering men. She, McKinnon, and their supporters consider marriage a form of prostitution. Advocates of absolute rights to abortion, they made common cause with christian fundamentalists solely on the basis that any depiction of the body unclothed is a crime to be punished.

Save us from the prudes who would make their shame the law of the land.

Sincerely,

Charles Breth

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 51
DATE 2-1-95
BILL NO. HB83

January 23, 1995

To: Montana House and Senate

Re: HB83

Closing the Information Superhighway

I have read HB0083_3.doc, the text from the state bulletin board system.

Do you understand the impact this will have on electronic information servers in the state of Montana?

Do you know that it will be illegal to bring the 'Information Superhighway' into the state?

We *KNOW* there is pornography on the Internet, and indeed on virtually any electronic information server. It does not automatically present itself to the user, but it's there. Everyone *KNOWS* it's there. To provide access to the Internet, for instance, would be to violate HB83. Even State Agencies would be unable to provide this access to employees of the state, other than uses so restrictive as to be useless. Access by schools, including the universities, would be out of the question.

Many of us are trying to make Montanans competitive in the world at large. This bill would slam the door on a very important resource.

Bob Worthy
1132 Breckenridge
Helena MT 59601

443 5219
bulletin board system 443 7508
Internet: bworthy@mt.net

305

My name is Brenda Brewer and I'm here today as a small business owner who could be effected by the passage of house bill 83.

The magazines that Rep. Herron refers to as obsene made up 12.6% or about 35,000 last year. I also carry a line of greeting cards that with the broad language of this bill might be declared obsene, these card were 3.1% or about $500 of the gross. Although this is a small part of my business I would still suffer a loss of about 43,000 a year if this bill were passed. May I remind you this is money I pay taxes on so everyone would loss false.

As a woman I feel no threat of any sex crimes being committed against me or any other person by the people who purchase these magazines

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 23
DATE 2-8-85
SB 83

I do feel however that a crime will be comitted if you ignore the people yesterday and our first amendment rights by passing this bill.

If this truly were a get tough on crime bill as quoted by one Rep we'd be talking about drug, theft + murder not something that's been around since Adam + Eve.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 53
DATE 2-8-95
BILL NO. HB 83

HB 83

submitted by
Sen Doherty
for Mary
Dykstra
of Great Falls

My throbbing [redacted] your hot, seething [redacted] Later, w[redacted] [redacted] whips and chains [redacted] pulsating [redacted] in the blender. Soft, pink flesh [redacted] like a Mac Truck.

The sensuous folds of your [redacted] in the backseat, while we [redacted] frontal lobotomy. Our tongues [redacted] your lips [redacted] my foot [redacted] Wayne Newton's Greatest Hits. Licking [redacted] Tarzan [redacted] totally spent.

You make me [redacted] on Valentine's Day.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 54
DATE 2-8-95
BILL NO. HB83

LAW OFFICES

Keller, Reynolds, Drake,
Johnson and Gillespie, P.C.

P. KEITH KELLER
THOMAS O. JOHNSON
RICHARD E. GILLESPIE
G. CURTIS DRAKE
JACQUELINE TERRELL LENMARK
ROBERT R. THROSSELL
JOE SEIFERT

38 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59601
TELEPHONE (406) 442-0230
FAX (406) 449-2256

OF COUNSEL
PAUL T. KELLER
PAUL F. REYNOLDS
GLEN L. DRAKE

Exhibit No. 54 includes 106 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

February 14, 1995

Senate Judiciary Committee
State Capitol
Helena MT 59620

Re: HB 83

Mr. Chairman and Members of the Committee:

As you deliberate on your executive action on HB 83, please consider these constituents who have written their opposition to HB 83 since the hearing on February 8. These Montanans join the hundreds others that submitted their names to you at the hearing in opposition to this bill and in favor of adult choice.

Montanans Against Censorship strongly urge you to vote "do not concur."

Very truly yours,

Jacqueline T. Lenmark

Jacqueline T. Lenmark, Esq.

jtl:j
Enclosure

cc: Dan Cederberg, Esq.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 55
DATE 2-8-95
BILL NO. HB83

Sally Garrett Dingley

(406) 683-4539
P. O. Box 414
Dillon MT 59725-0414

13 February 1995

Senator Bruce Crippen, Judiciary Committee Chairman
Capitol Station
Helena MT 59620

Dear Senator Crippen:

I attended the Wednesday hearing on HB 83 censorship bill, but was one of the last dozen in line to speak in opposition to the bill. I could only give my name and mention problems I had with a woman from Hot Springs who accused me of writing "border-line filth." Now I'm writing the rest of my thoughts about the proposed bill.

If this bill is intended to be an anti-child porn/adult porn or an anti-crime bill, it should have contained words that addressed those issues. After reading it several times, it's hard to overlook the reality that it is a deliberately vague piece of legislation that would enable groups such as the religious right to intimidate the rest of a community and therein lies its danger. I've lived in Dillon MT since 1982 and I've seen members of these groups try to take control of the schools and community meetings here.

I'll apply this proposed bill only to myself: a serious, sincere and ethical published writer and now trying to start up a small press operating out of my home office. Ironically, I can't get a small business administration loan because that law prohibits writers from getting loans to help with the cost of publishing his or her own writings (shades of the Joe McCarthy era!)

The bill reads, "A person commits the offense of obscenity if the person, with knowledge of the character of the item involved, knowingly: ...**publishes**..... or otherwise makes available obscene material....., **creates**.....obscene material for dissemination....." I write fiction and non-fiction. I've written sixteen novels. Twelve of them (85,000 and 95,000 word contemporary novels with six of them set in southwestern Montana) have been published since 1983. More than two million copies have been sold around the world. They are stories of relationships and commitment and they all contain at least one consummating love scene told in context to the characters and the unfolding story.

Only one woman ever accused me of writing filth, and she was part of the religious right in Hot Springs, but her threat left a lasting concern because it threatens my freedom to write what I want. She took a fade-away scene from my third book and turned it into a smut scene in her own mind. She saw things happening that I never put there.

If this bill should pass, before these zealot supporters head to Dillon to get me, they would have to bring charges against the Holy Bible. I'm Southern Baptist and a mother of four grown sons. The local Baptist churches I've belonged to encourage their members to investigate a subject under discussion and make their own decisions and choices based on their beliefs and personal sense of ethics. The Bible contains many sexually explicit scenes and subjects given in context but taken out of context become obscene and pornographic. Consider the Songs of Solomon in the Old Testament. It's beautifully written book but very steamy and more than suggestive.

Does the religious right plan to bring charges against Bible readers, religious book sellers and publishers, authors of the various books or their descendants, or the Idea Man behind the Bible in order to clean it up or get it out of the hands of the reader who can draw his or her own conclusions about its message?

I would think that by now the conservatives and/or Republicans would see the religious right as more than a voting block. It's a group or collection of groups of people hiding behind the term "Christian" and determined to get power over others in a community or country and control what they see, read, write or produce. Their actions do a disservice to Jesus Christ and his teachings. Shame on them for using his name in vain. They have a great fear of creative people or free thinkers who for them is anyone who doesn't think "their way." Creative people are represented in most of the categories mentioned in the bill.

The emotions and acts of love, sex and creativity are three areas of our private lives that the religious right can never control, and why should they want to? The Puritans of New England made a mockery of laws and justice 350 years ago and did great harm to the citizens who found themselves caught up in the unwarranted charges. Do we never learn from our past mistakes? Aren't their lives and families satisfying enough? Why do they work themselves into a frenzy about what their neighbors might be doing? Their own conduct is prurient in my opinion.

How dare they state in line 18-20 on page 3 of the third edition of the bill that they can destroy my books and materials. The books and research materials in my private library are mine, not theirs. That's the height of government interference and is contrary to all the dogma they spout about the government getting out of our lives.

My characters always create their children the old fashioned way; they make love. These fanatics have such revulsion toward the human body, the subject of love and/or sex in all its aspects that they've rejected one of God's most precious gifts. Do religious right couples undress in the closet and have sex in the dark? Do they create their offspring by immaculate conception or osmosis? I doubt it.

These people would use this bill, if passed, to begin a Puritanical witch hunt to purge the world of all actions they decree to be obscene. They should concentrate on cleaning their owns minds. Since I moved to Montana, I've watched every other year as this group or groups find some politician to be a front-man for them and try to ram through a bill to censor the rest of us. They disguise it as anti-crime or anti-port and what legislator would DARE oppose such an act? I, for one, would. I reserve the right to write what I want, sell what I can, and read what I choose, and no narrow-minded hypocrite wearing a mask of piousness will stop me.

I recommend the judiciary committee reject this bill because the supporters have misrepresented its purpose. If they are an honest and sincere group of people who really want to target the child porn/adult porn market, write a bill that speaks to that problem.

Sincerely,

Sally Garratt Dingle

Copies enclosed for the other members of the committee.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 56
DATE 2-8-95
BILL NO. HB 83

Hennessys

Montana Senate
Montana State Capital
Helena, Montana 59601

Dear Senator,

We are writing this letter in concern over House Bill 83, to revise the Obscenity Law. We have discussed the bill with people involved with both the legislature and business and we do feel that we understand the purpose for which it was filed but we are genuinely concerned that the language is too vague and therefore would be cause for considerable confusion in its implementation.

Many retailers sell, advertise, and display garments such as lingerie and swimwear. If an "average person, applying contemporary community standards" decides that our visual display, or advertising of these garments were in some way obscene, it is our interpretation that we would be open for penalty under this law.

I have collected a number of ads from various retailers. These have been inserted in the area papers over the past few weeks. I doubt that you would see these ads as offensive but again, what will the interpretation be from the "average person, applying contemporary community standards"?

We do believe that this bill is not aimed at businesses like us, but we also believe that it could be interpreted that way. We ask that the wording of the bill be changed to better define its' "target".

Thank You for your consideration,

Terry Myhre, Manager, Hennessys, Helena, Montana

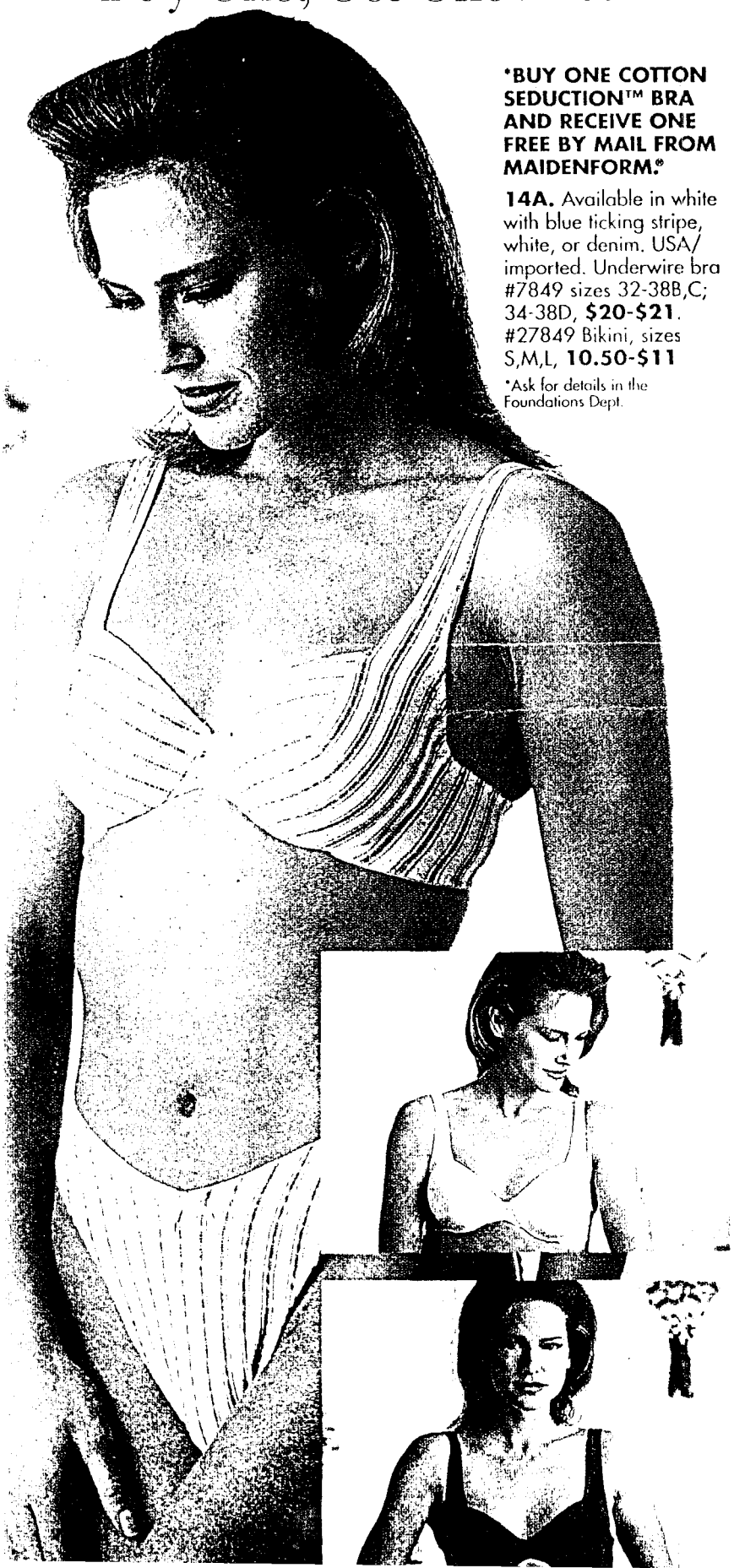
Keith Wright

Keith Wright, Manager, Hennessys, Missoula, Montana

Rhonda Roberts

Rhonda Roberts, Manager, Hennessys, Billings, Montana

Introducing Maidenform® Cotton Seduction™ Buy One, Get One Free*



***BUY ONE COTTON SEDUCTION™ BRA AND RECEIVE ONE FREE BY MAIL FROM MAIDENFORM.®**

14A. Available in white with blue ticking stripe, white, or denim. USA/ imported. Underwire bra #7849 sizes 32-38B,C; 34-38D, **$20-$21**. #27849 Bikini, sizes S,M,L, **10.50-$11**

*Ask for details in the Foundations Dept.

Maidenform® Bras-I
Satin Seduction,™ Sweet No
Chantilly,™ Rendezvous™ & H-a

14C. Maidenform™ Sweet Nothings™ lined underwire demi bra. In white or ivory. USA/ imported. #6887 Sizes 32-36A,B,C; reg. 21.50, **sale 14.99**

14D. Mai nform™ Rendezvous™ padded push-up underwire bra. In ginger, white and champagne. USA/ imported. #8322 Sizes 32-36A,B,C. Reg. 23.50, **sale 14.99**

Foundations

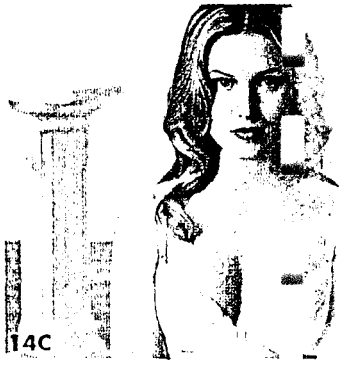


EXHIBIT 56
DATE 2-8-95
HB 83

Feburary 6, 1995
Hennessys
Southgate Mall
Missoula, Montana 59801

Dear Sir,

According to the revised obscenity law, HB 83, your advertisement in the Sunday paper could be "offensive" to "the average person".

With the passage of HB 83, your "nearly nude" models of body imagery could be considered exhibition of obscenity by some "average citizen" and you could end up in court, according to the law.

Please let the legislators Know this would not be a good bill for Montana.

A concerned citizen and customer.

25% OFF ALL HUNT CLUB® ULTIMATE BASICS

Coordinated Knit Separates

2/$20

Satin Underwire Bra
☎ If purchased separately, $14 ea.
Adonna® stretch satin bra. Nylon/LYCRA® spandex in basic and fashion colors. B,C,D cup.
Also available in other average and full-figure styles.

2/$10

Satin Panties
☎ If purchased separately, $7 ea.
Adonna® high-cut bikinis®. Nylon/LYCRA® spandex. Basic and fashion colors in S-L.

25% Off Casual Hosiery

SALE 4.31 3/Pkg.

SALE 5.81 3/Pkg.

Sale 4.31 Reg. 5.75; 3/pkg. Rib-knit anklets of cotton/nylon.
Sale 5.81 Reg. 7.75; 3/pkg. Lightweight slouch socks. Solid colors in cotton/nylon.

EXHIBIT 56
DATE 2-8-95
HB 83

FIND THE PERFECT GIF
FOR YOUR VALENTINE!

25
Ladies' sle
prints or sol
luxurious s
Reg. 9.99-2

25% of
Men's fas
gift for h
styles. S
Sale 5.24

2 $4

30% off

30% off

1.4

tops, pants
ripes or solids;
string or elastic
-12.99 Ea.
6W, fit 32-40 avg. or petite

e tra

1.99
dies' fleece
um jackets
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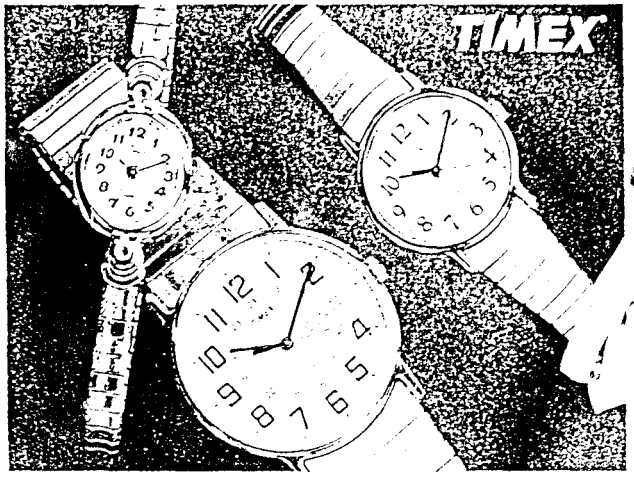
ble polyester/
otton jackets,
erously cut to
ow for layers.
choice; S-L.
Reg. 18.88
Styles vary by store

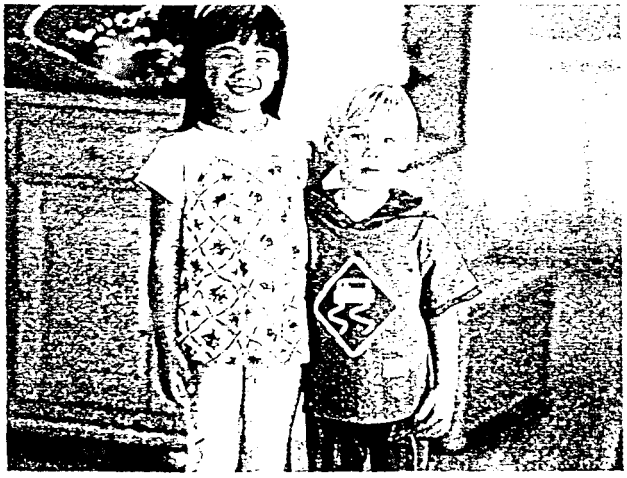


20.99
Ladies' or men's Timex watches
Time to save on these featured styles! Quartz-accurate movement; comfortable expansion band. Reg. 24.49-26.59 Ea.
Sale excludes other Timex and Timex with Indiglo® night-light styles

SEPARATE ISSUE.

8.88
Ladies' Separate Issue™ rayon shirts
Novelty buttons add a touch of fun to this fashionable short-sleeved rayon shirt. Choice of colors. S-M-L. Reg. 12.99-16.99 Ea.
Styles may vary by store

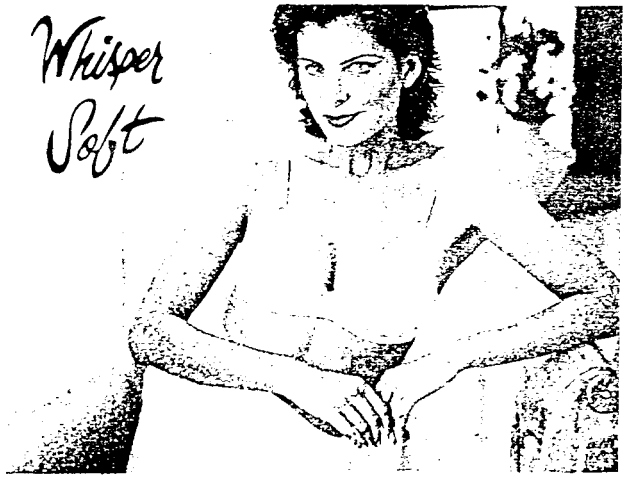
30% off
All ladies' and girls' bodywear on sale.
Choose from tees, leotards and bike shorts. Ladies' bra tops and leggings also available. Reg. 5.99-19.99, ***Sale 4.19-13.99***
Ladies' S-XL Girls' S-L



ants
or casual
tops or pull-
99-9.99 Ea.
izes 8-14

$8 *Infants' Tots'* **$12** *Girls' 4-14*
Children's pants sets. Infants' 12-24 Mos., Toddlers' 2-4, Reg. 9.99-12.99; Girls' 4-6X, Reg. 14.99; Girls' 7-14, Reg. 15.99-16.99
Girls' Pant Sets; 7-14, Reg. 17.99-19.99, Sale $15
Styles may vary by store

Whisper Soft

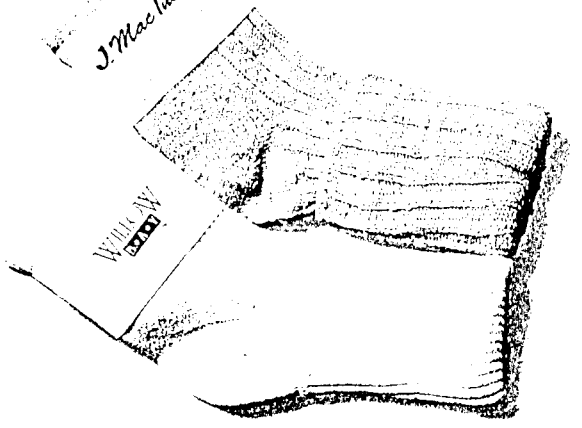


2.88 *Your Choice*
Whisper Soft bras or control briefs
A variety of styles. Reg. 3.99-4.99 Ea.
Other Whisper Soft: Bras, Reg. 7.99, Sale 5.88; Control Briefs, Reg. 5.99, Sale 3.88
Bras in 32-38, 34B-38C; briefs in M-3X

33% off everything on this page!

EXHIBIT 56
DATE 2-8-95
HB 83

J MacNally's



Willow Bay ladies' single socks. Choose from ladies' turn cuffs & natural socks in boot-cut styles. Sizes 9-11. Reg. 1.99, **Sale 1.33**

Chic® sport bra. Cotton/Lycra. Asst. colors. Reg. 7.99, **Sale 5.35**
Full figure or lace back sport bra. Reg. 9.99, **Sale 6.69**

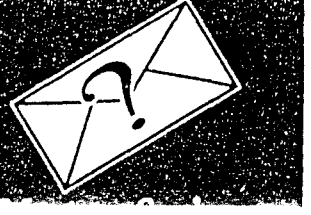
Vassarette bras. Soft cup, contour or underwire in white & asst. colors. Reg. 4.49-7.99, **Sale 3.00-5.35**
Not at Stevens Point South or Fort Atkinson

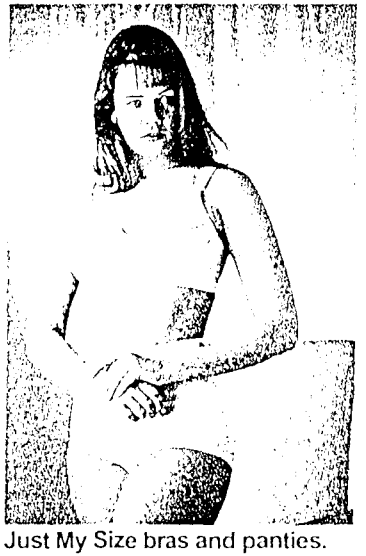
Bestform bras. Silver Saver, Body Cotton, or full figure styles. Reg. 5.99-9.99, **Sale 4.01-6.69**
Not at Stevens Point South or Fort Atkinson

Customer Appreciation SALE

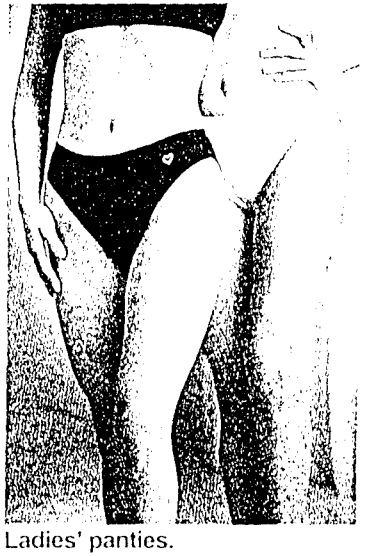
Tuesday, Jan. 17
6 p.m. to 10 p.m.

We're giving you four extra hours of savings because we appreciate your business. Don't miss this opportunity to save at ShopKo.



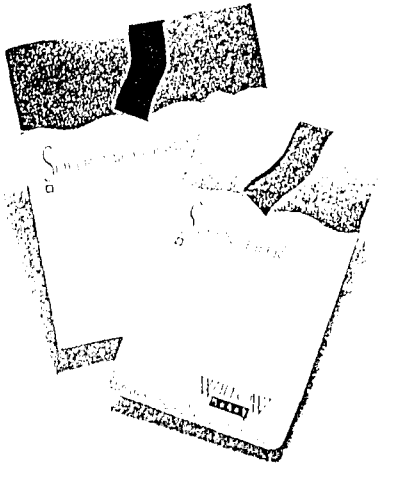


Just My Size bras and panties. Choose from cotton soft cup, leisure and underwire bras, or cotton briefs and control briefs. Reg. 6.39-12.99, **Sale 4.28-8.70**
Not at Stevens Point South or Fort Atkinson.



Ladies' panties. Choose from bikinis, briefs or high-cuts in assorted colors and prints. Reg. 1.99-2.49, **Sale 1.33-1.66**

Ladies' 3-pack socks. Choose from Inertia sport, Willow Bay or Hanes Her Way. Casual socks in white and fashion colors. Sizes 9-11. Reg. 3.99-4.99, **Sale 2.67-3.34**



Willow Bay sheers. Choose from control top, queen, support, thigh-hi's, silken sheer and micro-fiber. Reg. 1.29-4.49, **Sale 86'-3.00**

DATE 2-8-95

SENATE COMMITTEE ON H.B. 83

BILLS BEING HEARD TODAY: Judiciary

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
JOE AMATO	HOME TOWN VIVE	HB 95		X
Barb Henry	Great Falls	HB 83	✓	
Robert Brown	Rebecca Brown	HB83	✓	
Chris Imhoff	League of Women Voters of Montana	H.B 83		X
Laurie Koutnik	Christian Coalition of MT	HB83	✓	
Tobe Johnson	Image Plaza	HB 83		X
NICHOLAS BOGOSH	SELF	HB 83		X
Lonie Stimac	self	HB83		X
Betty Robinson	self	HB83	X	
Loren Soft-Rep HD 12		HB83	X	
Brad Griffin	MT Retail Assoc	HB83		X
PEGGY ARNOTT	HD # 20 SELF	HB83	X	
LOIS Halsey	Eagle Forum Bulletin	HB83	X	
DAN McGee, Rep.	HD 21		✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Dave Smith	MATO & USDA	HB83		X
DAN ERVIN	MT Assoc Theatre Owners MT Chapter Video Software Dealers	HB 83		X
AL TROUTT		HB83	X	
LEN MUNSIL	NATIONAL FAMILY LEGAL FOUNDATION	HB 83		
Gary Wayne	Pastor	HB 83	✓	
Tracy Widhalm	Montana Theatres	HB83		X
Dallas Erickson	MCDL	HB 83	X	
Steve TAYLOR	Myself	HB 83	X	
Pat Blade	Myself	HB 83		X
Sally Garrett	Writers in MT	HB83		X
Kelly [illegible]	Self	HB83		X
Jay R Searle	Self	HB83	X	
Naomi C Perry	self	HB83	X	
Thomas C. Perry	self	HB83	X	

VISITOR REGISTER

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REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
SAMANTHA SANCHEZ	ACLU	HB83		X
Wayne Hirst	All. of Cons. for Const Arms	HB83		X
Greg Gosnell	self	HB 83	X	
Brenda Brewer	Small Business	HB83		X
John G Thom	BOP	HB 83	X	
Richard Miller	State Library	HB 83		X
Ed Stanfill	LDS Church	HB83	X	
Buddy Oard	~~Family~~	HB 83	X	
Jim Hills	Self	HB83		X
Forrest CHRISTINN	MONTANA INTERNET Coop	HB 83		X
Bob Hollow	HELENA NEWS, INC	HB83		X
JEFFREY W JOHNSON	BLOCKBUSTER VIDEO			X
DONALD KERN	SELF	HB83		X
DEWEY BAKER	SELF - STEVENSVILLE	HB83	X	

VISITOR REGISTER

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REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
[illegible]	MATO	HB83		X
Lee Gladney	Basic Materials HB83	Mat	X	
Genevieve S. Baumann	self	HB	X	
MARIE BURTSFIELD	SELF.	H.B	X	
Chassidy Johnson	MCDL		X	
Bonnie A. Jones Bonnie Jones	MCDL	H.B. 83	X	
Kristy Coleman	MCDL	H.B 83	X	
Leta Mitchell	MCDL	H.B. 83	X	
Norman Mitchell	MCDL	H.B. 83	X	
[illegible]	SELF			X
AL THOMPSON	SELF	H.B83		✓
Jan Steel	USDA	HB83		✓
Bonnie Steel	USDA	HB.83		X
SHARON HOFF	MTCATH CONF	HB83	X	

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REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
[signature]	self	83		X
Donald A. Kern	Self	83		X
Kay Hickman	Self	83		X
Susan Nissen	Self	83		
Richard Smith	self	83		X
Pat Manuel	self	83		X

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DATE 2-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support (Student observation)	Oppose
Lynn James	MT City School	83	observation	
DANIEL SCOTT Doyle	Missoula Citizen	83	X	
Theresa W. Doyle	Missoula Homemaker	83	X	
Tawnee Lambert	Helena Citizen	83	X	
Denise M. Brunett	Helena citizen/parent	83	X	
CONNIE DEARY	HELENA CITIZEN	83		X
Cheryl White	Helena Citizen	83		X
Suzanne Rice	Helena Citizen			X
Corinne Erdahl	Helena Citizen	83	X	
Marguerite Jacobs	Collection MT	83	X	
Paul Jacobs	"	83	X	
Christine Kaufmann	self	83		X
Clerk Wanso	Self	83		X
Janet Mullen	self	83		X

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DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Karen Screnar	self	HB 83	X	
BOB FITZGERALD	Self	HB 83		✓
Kamala Webb	self	HB 83	X	
JEFFREY RENZ	Self	HB 83		✓
Jacqueline T. Denmark	~~Montgomerians Against Domestic Violence~~	HB 83		X

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REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON HB/SB Judiciary

BILLS BEING HEARD TODAY: NB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Leslie Upcott	MT Ctz. for Preserving the Law	83	✓	
Don Johnson	Foster Parent	83	✓	
Jim Hedges	MT Lib Assn	83		✓
Scott Crichton	ACLU/MT			✓
Leon Elysian	Mont Theatres	83		✓
[illegible]	Big Sky Cinema	83		✓
Terry Crooks	Myself	83	✓	
Theresa Crooks	myself	83		
Paul DOCKTER	" "	83		✓
Brenda DOCKTER	" "	83		✓
Joe Amato	" "	83		✓
Lyla Amato	" "	83		✓
ELMER A. SEARLE	"	83	✓	
HOWARD PICKERILL	Polson Theaters	83		✓

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REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Verl Clark	Theatre Owners (MATO)	HB83		X
Ayron Rokenill	Polson Theatres	HB83		X
Michelle Fox	self	HB83	X	
CHARLES BRETH	X RT	HB83		X
Kevin S Fox	self	HB83	X	
Kevin R. Noland	self	HB83	X	
Margaret C. Hollow	self	HB83		X
Barbara LaRue	self	HB83	X	
Bette Hubrich	Self	HB83	X	
JAMES RAMSEY	SELF	HB83	X	
Carol Nordtvedt	MAC.	HB83		X
Rodney K. Smith	SELF	HB83	X	
JAMES L. MULLIN	SELF	HB83		X
Louis Arrambarri	ARTISTS OF HELENA	HB83		X

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DATE 2/8/95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jenny Erickson	Myself	HB 83	X	
Bill Stevens	MT Food Dist Assn	HB 83		X
Dale Johnson	Discount Tire	HB83		X
WYNN HUBRICH	SELF	HB 83	✓	
Kate Cholewa	MT Wolves Lobby	HB 83		X
Bob Campbell	Gov/A Arts Sec	HB83		X
Lisa Frazier	Self	HB83		X
Tim Holmes	Artist	HB 83		X
Riley Johnson	Montana Broadcasters	HB 83		X
Arlynn Fishbaugh	Mt. Arts Coal	HB83		X
Mike Blakesley	Mt. Assoc of Theatre Owners	HB83		X

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REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
David Hermsen	MT Assoc. of Churches	HB83	✓	
[illegible]	MT. Newspaper Assn	HB83		✓
Donna Repstad	Mont Assoc Theatre Owners	HB83	✓	
RICK ALAN DEADY	MYSELF	HB83		✓
CLARENCE HOVELAND	"	HB83		
PASTOR CARYL L. RANDALL	FLORENCE BAPT. CHURCH	HB83	✓	
Pastor Timothy P. Johnson	Florence Bapt. Church	HB83	✓	
ROBERT NOEL CLARKSON	Am Soc Media Photographers	HB83		X
RUSS LAWRENCE	CHAPTER ONE BOOK STORE	HB83		✓
Barbara Theroux	Fact + Fiction	HB83		✓
Debbie Sporich	The Book Store	HB83		✓
Don Jenni	Sexuality Education	HB83		✓
Gloria Hermanson	MT Cultural Advocacy	HB83		✓
MARY SWEENY MOE	—	HB 83		✓

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REGISTER.F10

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE/FEDERAL RELATIONS

Call to Order: By **CHAIRMAN AUBYN CURTISS**, on March 7, 1995, at 11:10 a.m.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Roger Somerville, Vice Chairman (Majority) (R)
Rep. George Heavy Runner, Vice Chairman (Minority) (D)
Rep. Matt Brainard (R)
Rep. Bill Carey (D)
Rep. Patrick G. Galvin (D)
Rep. Judy Murdock (R)
Rep. Ray Peck (D)
Rep. William R. Wiseman (R)

Members Excused: None

Members Absent:

Rep. Daniel W. McGee (R)
Rep. Robert J. "Bob" Pavlovich (D)

Staff Present: Patti Borneman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 167
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: 000; Comments: n/a.}

HEARING ON SB 167

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT said this bill would require all state agencies to evaluate the federal mandates they operate under, and report to the governor their findings. After review by the governor, he would declare under executive order that the state intends not to comply with those mandates found to be outside the scope of the state's needs, in terms of cost effectiveness and public policy. The governor would report those findings to the next legislature.

SEN. BENEDICT said this bill simply asks the federal government to reestablish the state's rights, and make Montana more of a partner with the federal government in determining Montana's policies and needs. The bill would realign the state with "what the framers of the Constitution had in mind." He quoted James Madison from the federalist papers:

> The powers delegated to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects, such as war, peace, negotiations, and foreign commerce. The powers reserved to the several states will extend to all the objects, which in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the states.

SEN. BENEDICT said this bill is a necessary policy statement and stressed that states need to start asserting more control over their destiny and this bill would give the governor the executive power to start determining what is in the best interest of Montana. The bill also points to the 10th Amendment of the Constitution as part of this evaluation.

Proponents' Testimony:

Charles Brooks, Billings Area Chamber of Commerce, said it is time to recognize that the best government is the government that is closest to the people. He agreed with **SEN. BENEDICT'S** observation about the Constitution and said that people at the state level have lost much governing power that needs to be restored to legislative affairs and the executive branch, as well as local counties and cities. He urged them to give this bill a do pass vote.

Jim Tutwiler, Montana Chamber of Commerce, supported SB 167 and stated that as an advocate of big and small Montana businesses, they have been hearing that both state and federal regulations adversely impact business. This has been a growing concern for many years and this bill is a "rational and logical" way to examine regulations, priorities and costs that impact the state. He said if they don't examine these actions, businesses will suffer. He urged their serious consideration of this bill.

Dean Randash, NAPA Auto Parts, said he is a small business owner in Helena and has 14 employees. He stated that he had better things to do than appear before the committee, but the infringement of any government on the affairs of his employees and himself has necessitated his involvement in this issue. He described the structure of society and stated that governmental and social institutions are "less than the state, but greater than the individual." He emphasized the importance of individual freedoms and said that it is time for an intermediary to

determine and assess "what is going on and to protect the citizens who deserve to be free." He strongly urged that this bill be supported in order to start the process to give back rights and integrity to the people.

Opponents' Testimony

Darrell Holzer, AFL/CIO, rose in opposition to SB 167. He said it could be more fairly titled "the resumption of the War Between the States bill," and said it amounts to nothing less than an anarchist view of government relations. If the counties of Montana got together and sent the legislature a newly adopted county policy such as this, the legislature would reject it as an unconstitutional assertion over areas in which they have no jurisdiction. He said the state legislature has no authority over federal law. If they don't like federal laws, they can pass resolutions to make their concerns and wishes known to the federal government, but cannot pass a bill that says they are simply not going to follow federal law. He said there are laws that can be argued with and regulators who don't understand the peculiarities of life and government in Montana, but that doesn't mean they have the authority to "stand up and leave the game."

Mr. Holzer said there are provisions in place in state and federal laws to voice their concerns and have them addressed. Section 8 of the bill reminds legislators that they are bound by sections 9 and 10 of Article 2 of the Montana Constitution. He suggested the legislature work within the system of the constitution to address concerns about federal regulations and laws. Speaking as a Marine Corps veteran, he said "this is still the absolute best country in the world, bar none, and I'm darn proud to be fortunate to live in this country."

Jim Jensen, Montana Environmental Information Center, was opposed to SB 167 and while he had mixed feelings personally, his organization strongly opposed it. However, he said Montana is far superior to the United States in terms of what is contained in the state constitution and the rights afforded the citizens of the state. He said some of the rights he holds dear are those of Article 2, which include a right to know what the government is doing which is not provided in the U.S. Constitution. He said Montanans have a right to examine all public documents and observe all deliberations of meetings of government agencies in the state. There is an Equal Rights Amendment for all men and women in Montana. Montanans have a right to a clean and healthful environment. "Not one other American has that same right."

Mr. Jensen said Montana's Article 9, Section 2, requires that mines reclaim their land. The 1872 mining law, which governs the rest of the country, does not "hold absolute sway in Montana." He said this bill does not reinforce the good things in Montana government, but condemns the good things that the federal government is doing.

He referred to the principle of unfunded mandates and the constant debate and rhetoric that surrounds much of the discussion going on in the legislature. In Montana, environmental laws, which are the focus of this deliberation, are not unfunded mandates. "That is a fraud being perpetrated in this country." He asked them to look at the fiscal note the legislature has for HB 440 which was introduced to repeal all of Montana's environmental laws. It shows that the requirements that Montana has to meet under federal environmental laws are paid for. Out of $25 million, Montanans would save only $271,588 the first year and $260,955 the second.

In reference to the bill directing the government to examine the "custom and culture" of Montana, **Mr. Jensen** stated that he does a lot of work with Native Americans on reservations. He wondered if it could left up to a few individuals to decide what the custom and culture of Montana is, which is not something that exists statewide as one entity, but changes in the different regions and communities of the state.

CHAIRMAN CURTISS asked **Mr. Jensen** to keep his comments to the mandates bill. He responded that he was and was referring to language in the bill. He said custom and culture must be enforced and any federal requirement that is contrary to that custom and culture must be rejected. He further submitted that would be an impossible requirement to impose on the attorney general, and would only result in conflicts.

Deborah Smith, Helena attorney, Sierra Club, said they are opposed to SB 167. She agreed with all the statements made in opposition to the bill. She said it is based on a flawed notion that the federal government has overstepped the bounds of its jurisdiction. She cited the 10th Amendment and read: "The powers not delegated to the United States by the constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people." She said this exists in the bill of rights, and that states' rights are delegated in Articles 1 through 7 of the Constitution.

One of those powers is the one delegated to Congress--Article 1, Section 8--to regulate commerce with foreign nations and among the states. This is the power that gave authority, for example, to the U.S. Supreme Court to desegregate schools, congressional authority to enact environmental laws, and worker safety standards.

Ms. Smith said the bill gives the notion that the federal government has gone beyond where it was properly delegated. She said she believed the intentions of the founding fathers were to set up a strong federal government that was comprised of individual state components that could regulate everything not expressly delegated to the federal government. She noted that the proponents are currently winning in Congress. The U.S. House

of Representatives passed HR 9, "a dramatic rollback of almost every environmental law that has been passed in modern times."

Ms. Smith called this bill a sedition bill. "We are one country, indivisible, united under God, and we all say the pledge of allegiance. Montana is a sovereign state in the union. It's not a sovereign nation." She said to have a law that would direct the governor to issue an executive order to tell the federal government "we're not going to implement this law because it doesn't conform to Montana customs and culture and doesn't serve Montana public policy. . .is civil war." She said this is radical legislation and is not needed to get the result that is desired by the proponents. She encouraged the committee to table the bill.

{Tape: 1; Side: A; Approx. Counter: 649; Comments: n/a.}

Christine Kaufmann, Director, Montana Human Rights Network, stated that the Network is a private nonprofit network whose mission is to help communities counter bigotry, hatred and intolerance. She commented that they are not part of the Human Rights Commission, which is a state government agency enforcing state human rights law. She said, however, they do care about what happens in that agency, and interpreted the bill to say that instead of investigating discrimination complaints, they need to be in their offices figuring out what kind of federal mandates they have, what they're costing, and whether they apply to Montana's custom and culture.

Ms. Kaufmann said the history of civil rights enforcement is a history of federal intervention. The federal government has traditionally stood up for individual liberties and individual freedom. If this bill had been in force 125 years ago, she believes the federal mandate to free the slaves would have been challenged. She reminded the committee of the necessity of the federal government to enforce desegregation in public schools. The Civil War was fought over the issue of states' rights and she didn't think they needed to do that again. She read from article 6 "This constitution and the laws of the United States and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land." She urged them to kill the bill.

Ted Lang, Northern Plains Resource Council, said they recently met to discuss the federal clean water act and how parts of that act related to nonpoint pollution. The decision they came up with was that NPRC believed that any federal standards that were established should be respected and they would urge representatives to argue for a policy in that act to make sure they are implemented at a local level. Their position is to work through the process, not outside of it. They're concerned that this bill goes outside of the process and allows the governor to say Montana shall not comply with a federal mandate.

Mr. Lang agreed with the statements of the other opponents and added that when federal environmental standards are established, it involves tremendous amounts of scientific research, hearings generating a good deal of public and legislative debate, and Montana doesn't have the resources to fully review federal standards development.

He said this bill would assert "sweeping responsibilities" for the state of Montana. He said recent actions of the state hard rock mining bureau (Montana Department of State Lands) have not indicated that they can be responsible for implementing laws to protect air, land and water. They are not confident that the state can protect the environment "if we throw the feds out." They are also concerned with the reference to custom and culture, and how that could possibly be defined and used in a legal setting.

Brad Martin, Director, Montana Democratic Party, said they are a strong supporter of states' rights and are proud of the many laws passed in Montana that actually lead the nation, such as protecting the health and safety of economic development. However, the Democratic Party is a strong opponent of SB 167 and he stated that the central question is how far they want to go. He said the bill as amended is not the first step in asserting states' rights, but is instead an attempt to change the relationship of Montana with the United States. He stated that Montana citizens are members of both constituencies, state and federal. He said they should do everything they can to make that relationship sensible, workable, and protective of all people's interests. He said the federal government "does stupid things" as well as the state government.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: While turning tape over, lost example of OSHA laws being implemented in REP. CURTISS' district that Mr. Martin believed to be unreasonable.}

Mr. Martin said Montana's U.S. representatives, Max Baucus and Conrad Burns, are involved to make sure laws impacting Montana make sense. He said he didn't think the committee wished to disassociate from all laws protecting workers and children, for example. From a political party standpoint, he sensed they had more in common than not.

Mr. Martin cited page 3 of the bill that shows specific laws that were struck from the bill in an amendment. Page 8 shows that if there was a federal mandate they didn't want, the state would resist compliance with it. He again asked how far they want to go to undo the relationship between the state and the federal government. He interpreted the language on page 3 to mean that the state is ready to "do anything for a job, ready to do anything to our environment, to our children, to our families." He said the committee is heading somewhere they don't really want to be and gave several examples of mandates that are beneficial to the state's economic development. He didn't think they wanted

a law that would create a "pick and choose approach to the federal laws that protect the health and safety of Montana citizens." He strongly urged them to reject this bill as amended.

{Tape: 1; Side: B; Approx. Counter: 120; Comments: n/a.}

Questions From Committee Members and Responses:

REP. PAT GALVIN asked **SEN. BENEDICT** for his opinion on state mandates to cities and counties. **SEN. BENEDICT** replied that the bill doesn't address cities and counties, but reiterated that the best and purest form of government comes from the people. He said he'd have no problem with cities and counties, in turn, assessing their relationship to state government.

REP. MATT BRAINARD asked the sponsor if the states were responsible for forming the federal government, and he nodded yes. **REP. BRAINARD** then asked if the state must form enabling legislation for local government. **SEN. BENEDICT** replied basically, yes.

REP. PECK asked **Ms. Smith** if she was an attorney and she said she was. **REP. PECK** asked what her understanding of federal and state government was in terms of education and the relationship that should exist under the constitution. **Ms. Smith** replied that education is primarily dealt with on a local level, and the role of the federal government comes in when individual liberties, upheld by the U.S. Constitution, have been violated.

REP. PECK asked if she understood anything about federal government requirements imposed on special education instruction. **Ms. Smith** said she was not familiar with this area. **REP. PECK** said there are seven Democrats co-sponsoring the bill who are all strong supporters of public education, and they signed the bill for the same reason he did, which is because he's tired of the federal government dictating to local school districts "in the very minutest terms" what they must do to comply with federal law when they only contribute about 7% of the cost. He welcomed her comments in response.

Ms. Smith said it would be difficult for her to address that issue, since she isn't familiar with those requirements. She thought **Mr. Martin** eloquently explained that the federal government sometimes does stupid things, but said the remedy should be to use the system that is in place and go through Congress.

REP. PECK apologized for being late to the meeting and heard only a portion of the opponents' testimony, and he thought he heard because the federal government does some good, they should not be questioned or challenged and wondered if he misinterpreted what he heard. **Ms. Smith** said that was not what she intended to convey, but said she believed they should be challenged under the

current system that exists under the Constitution. She said the problem with this bill is the mechanism that is used to challenge the federal government's authority.

Ms. Smith cited debates she has watched on C-SPAN and in national news media, that show a movement toward a "vulcanized" world. She said Montana cannot compete on its own without the "massive federal subsidies" it currently receives. She stated her belief in the system of government that has worked for 200 years.

{Tape: 1; Side: B; Approx. Counter: 120; Comments: n/a.}

REP. PECK stated that sometimes the federal government has threatened individual units of government with the loss of all federal funds because they are in violation of one program. He asked if that was acceptable to her. **Ms. Smith** said in the incidence of environmental laws where highway construction funds can be withheld, this is for the purpose of enforcement. She asked how else can the federal government get compliance. She said there is a valid movement away from litigation toward more collaboration.

{Tape: 1; Side: B; Approx. Counter: 240; Comments: n/a.}

REP. BILL WISEMAN asked the sponsor if he knew of other states with similar legislation, either pending or in effect. **SEN. BENEDICT** said the states of Colorado, Utah, and California have passed similar legislation and described the differences from state to state. He explained why SB 167 does not have a huge fiscal note.

REP. WISEMAN then said the reason the federal government has been able to exert so much power is because they keep the states divided and have no mechanism to get together. He asked if they passed this law, what avenues would they have in Montana to inform other states that they've passed the law as well. **SEN. BENEDICT** responded that the Council of State Governments is organizing a gathering of the states in the summer of 1995 to talk about federal and state relations, and bills such as this one will be discussed at that gathering.

REP. WISEMAN told **Mr. Lang** that he wanted his reaction to an air monitoring project that took place in Great Falls. He said Great Falls has been considered a noncompliance city with polluted air, and now they are in compliance, and he asked **Mr. Lang** for his interpretation of this. **Mr. Lang** said that different "bureaucratic pathways" have been used to assess communities compliance with such laws.

REP. WISEMAN told a story about an EPA sensing van that was placed in the worst possible place in the city, 10th Avenue South and 9th Street. This resulted in a reading that Great Falls was a polluted city. The property owners then all agreed not to lease to the sensing van to keep them out of the two block area

around this intersection, and upon moving the van to 26th Street, they found that Great Falls was no longer polluted. He said they kept looking for ways to return to the more polluted area. This incident made him very angry because it appeared as though the federal government was trying to justify their actions and he said would do everything he could to get this bill passed.

REP. BILL CAREY told the sponsor that he believed this bill and others like it could put the state into a "dangerous game" and he wondered whether he had considered the possible dangers that could result and if so, how did he think the state could avoid them. **SEN. BENEDICT** replied that he feared if they didn't do something, they would be on a dangerous course. The reason he introduced this bill was to redefine their role in a balance of power between the federal government and the states. He said that one member out of 435 in the U.S. House of Representatives does not provide true representation to protect Montana's interests.

REP. CAREY said one of the reasons he thought it was dangerous is because he can foresee a time when Americans might take up arms against one another again over states' rights. He asked **SEN. BENEDICT** if he thought that could happen. **SEN. BENEDICT** replied that he didn't think his bill would contribute to that possibility and if it did, the federal government probably was guilty of overstepping its relations with the people. He said the "sky is not falling" with this bill and doesn't require the government to order the state militia to protect the borders against federal intrusion or protect the schools, and is not a threat.

REP. GEORGE HEAVY RUNNER alluded to C-SPAN and discussion about the Contract With America being implemented by the current U.S. House of Representatives. He said that tribes are visiting Washington, D.C. to remind them that they, too, have a contract with America called treaties. He cited Article 1 of the constitution that is a compact saying that all lands owned or held by Indians or Indian tribes would be under the jurisdiction or control of the Congress of the United States, and would not be revoked unless there was a certain majority vote by U.S. and state citizens.

REP. HEAVY RUNNER said that Montana tribes have had a relationship with the federal government that is older than statehood. He asked the sponsor if there was any language in his bill that would cause tribes to have to re-invest in their "treasures" to protect their rights. He said there are many decisions being made that would impact tribes, for example, what is currently happening in Flathead County. He asked if the state might have to vigorously defend itself for protection.

SEN. BENEDICT responded that he didn't think it would, but that the bill is a state/federal relations bill, and as he understands it, compacts and tribal agreements might be enhanced if tribes

took a page from this type of bill to establish something for themselves, because they consider themselves sovereign nations dealing with the federal government and he didn't see how it would conflict with tribal relations with the federal government.

REP. HEAVY RUNNER wondered if it would conflict with state relations. **SEN. BENEDICT** didn't think it would, but would only relate to states and the federal government. **REP. HEAVY RUNNER** wanted to know why there wasn't a fiscal note. **SEN. BENEDICT** said when it was first introduced, it was more ambitious and required more branches of state government to be involved. They pared it down considerably and the departments that would be required to work together--Budget Office, LFA, Legislative Council, Justice Department--were cut from the bill because the fiscal note was too "spendy." It currently requires the individual state agencies to produce the information they're already producing, and to present it to the governor.

REP. HEAVY RUNNER said there is a potential fiscal impact when the state could request information, develop detailed description of records to analyze, and request assistance of staff employees, and it sounded to him like additional duties would be imposed by the legislature. **SEN. BENEDICT** said that funding is already provided to the justice department to do just what the bill asks.

REP. HEAVY RUNNER then cited page 8 where it states that the prioritizing would be delegated to the legislature to gather and analyze the information from state agencies. **SEN. BENEDICT** said that all the legislature would do is receive a report from the governor.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. PECK said he disagreed with **SEN. BENEDICT'S** last statement and said on page 8, lines 22-25, the New Section 8 of the bill says "In exercising its authority as an equal branch of state government the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of sections 1 through 8." He said that suggested to him that the legislature could create a study committee or assign the LFA staff to do some of this work, and there would be some costs associated that are difficult to estimate.

SEN. BENEDICT said this requirement would affect the 55th Legislature when the report would be made to the legislature and then, just as they do with any legislature, it may require some funding, but this bill doesn't require it. **REP. PECK** agreed that it doesn't require it, but down the line there is a strong possibility that funding would be needed.

<u>Closing by Sponsor</u>:

SEN. BENEDICT congratulated the loyal opponents of the bill for following it to the House, in spite of the bipartisan support

showed by the Senate. He said they were not successful in killing the bill with the same arguments. He said the language in the bill is not rhetoric or inflammatory, but is just a statement that the people of Montana are not comfortable with the encroachment by the federal government on affairs that should be left to Montana. It won't be settled in the years to come, but "the people of Montana are restless and they want less government interference in their lives. This bill is just a tool for the state to help develop its strategy in restoring the balance of powers between state and federal government." He said they wouldn't require the ignoring of mandates, but would begin to assess where they should resist burdensome and unnecessary federal rules and regulations, toward development of programs that meet the needs of the state.
Adjourned. 12:12 p.m.

ADJOURNMENT

Adjournment: 12:12 p.m.

Aubyn Curtiss
AUBYN CURTISS, Chairman

P. Borneman
PATTI BORNEMAN, Secretary

AC/pb

HOUSE OF REPRESENTATIVES

State/Federal Relations

ROLL CALL

DATE 3/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Aubyn Curtiss, Chairman	✓		
Rep. Roger Somerville, Vice Chair, Majority	✓		
Rep. George Heavy Runner, Vice Chair, Min.	✓		
Rep. Matt Brainard	✓		
Rep. Bill Carey	✓		
Rep. Pat Galvin	✓		
Rep. Daniel McGee		✓	
Rep. Judy Rice Murdock	✓		
Rep. Bob Pavlovich		✓	
Rep. Ray Peck	✓		
Rep. Bill Wiseman	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

State/Federal Relations DATE 3/7/95

BILL NO. SB 167 SPONSOR(S) Sen. Steve Benedict

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
DARRELL HOLZER	AFL-CIO		X
Brad Martin	MT Democratic Party		X
Deborah Smith	Sierra Club		X
Don Roadcap	NAPA auto parts	X	
Charles R. Brooks	Billings Chamber	X	
Jim Jensen	MEIC		X
Jim Tutwiler	MT Chamber	✓	
J.V. Bennett	MontPIRG		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE/FEDERAL RELATIONS

Call to Order: By **CHAIRMAN AUBYN CURTISS**, on March 9, 1995, at 5:00 p.m.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Roger Somerville, Vice Chairman (Majority) (R)
Rep. George Heavy Runner, Vice Chairman (Minority) (D)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Rep. Daniel W. McGee (R)
Rep. Judy Murdock (R)
Rep. William R. Wiseman (R)

Members Excused:

Rep. Robert J. "Bob" Pavlovich (D)
Rep. Ray Peck (D)

Members Absent:

Rep. Bill Carey (D)

Staff Present: Patti Borneman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HJR 27	
Executive Action:	SB 167	BE CONCURRED IN
	HJR 27	DO PASS AS AMENDED

{Tape: 1; Side: A; Approx. Counter: 010; Comments: n/a.}

HEARING ON HJR 27

Opening Statement by Sponsor:

REP. MATT MCCANN, HD 92, said the purpose of this resolution is to urge Congress to provide constitutional status to the line item veto, which would allow the President to make selected cuts rather than kill the entire bill. There are two bills that will soon appear on the floor of the U.S. Senate. The first bill would allow for proposed cuts to automatically take effect unless Congress voted by a two-thirds margin to overturn them. The

second bill would require Congress to vote on a Presidential proposed package of spending cuts, which would be put in place if passed by a majority of both chambers. This is the legislation that is being considered for a line item veto, and both bills would give greater presidential power to "weed out pork."

REP. MCCANN said he didn't bring any proponents to testify because he didn't know if there would be any resistance. This resolution would encourage Congress to give the line item veto constitutional status. He said the term "enhanced recision"* needed explanation and said it is federal language for statutory law, which can be repealed by the next Congress.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. MATT BRAINARD said this applies only to appropriations bills, so it would not allow the President to change other types of bills.

REP. PAT GALVIN asked for the meaning of enhanced recision. **REP. MCCANN** said he researched the meaning of this and first went to the Legislative Council Librarian who told him it meant immediate effective cuts, but was also given the definition of statutory law. He said the point of the resolution is to put the line item veto in constitutional status.

REP. GALVIN suggested the words United States should be added to the title and in the body of the bill, such as how it reads on line 7. He wondered if it is necessary to add United States all the way through, or is it just understood. He said, to him, "enhanced recision" meant an enlarged or greater reduction. He said maybe they should go for this since it seems to be "the thing."

REP. BRAINARD asked if the sponsor knew how many governors have the line item veto. **REP. MCCANN** said he didn't, but that the Montana governor has it.

REP. GEORGE HEAVY RUNNER mentioned the balanced budget amendment that recently failed in the U.S. Congress and asked **REP. MCCANN** what the likelihood was of the line item veto being passed.

**Recision is the correct spelling of this word and according to the Oxford English Dictionary means "The action of cutting back or pruning."*

REP. MCCANN said the McCain version of the line item veto is his preference, but believed one of the two will be chosen. He didn't know which one.

REP. HEAVY RUNNER asked if it has a good chance of passing. **REP. MCCANN** said it does have a good chance.

REP. HEAVY RUNNER clarified that it has the support of both houses of Congress and the sponsor agreed. **REP. MCCANN** said the U.S. House of Representatives passed the McCain bill 294-134 with 71 Democrats voting in favor.

REP. BILL WISEMAN stated that there are three popular wishes of the citizens of the U.S.: a balanced budget, the line item veto, and term limitations on the national level.

CHAIRMAN AUBYN CURTISS asked **REP. MCCANN** if there are other states preparing resolutions similar to this one. **REP. MCCANN** said that Montana is one of the last states to forward a resolution.

REP. ROGER SOMERVILLE asked if that is because the Montana legislature meets every other year or because the other states started sooner. **REP. MCCANN** said he didn't know.

REP. SOMERVILLE asked the sponsor if he could propose an amendment to add United States before Congress in the bill on lines 5, 11 and 16. **REP. MCCANN** said he wouldn't mind if that addition was made.

Closing by Sponsor:

REP. MCCANN said he believed the line item veto would be a major reform of the federal spending process. It is supported by the American people and with the committee's passage, the people of Montana would be proud to send it on to Congress.

{Tape: 1; Side: A; Approx. Counter: 335; Comments: n/a.}

EXECUTIVE ACTION ON SB 167

Motion: **REP. MATT BRAINARD MOVED THAT SB 167 BE CONCURRED IN.**

Discussion:

REP. PAT GALVIN said he had a discussion with **Mr. Brooks** and **Mr. Tutwiler**, who were opponents during the hearing. They discussed the challenge to Article 6, whether or not it's a seditionist bill, and how the issue of culture and custom might affect the state of Montana. He said they all agreed that everything contained in the bill already exists, except for the process.

REP. JUDY MURDOCK said this bill calls attention to government mandates and she would be in favor of that.

REP. SOMERVILLE said this bill would give them a chance to see what's coming from the federal government and to evaluate what is good and what is bad and the impact on the state. He said this should be done every ten years to determine what the state is doing right or wrong, and supported the bill under the premise that the state should be doing such self-evaluations anyway.

REP. WISEMAN said the climate is changing and Congress is "at last about to get the message that American people are fed up" and the time is right as a state to do this kind of evaluation. He said if Montana would do it along with all the other states, they would have less federal mandates. He briefly reiterated the experience with air quality monitoring in Great Falls, which he described at the hearing. He said enough is enough and since they don't really know how Montana is being impacted, it's time to find out.

CHAIRMAN CURTISS reminded the committee about the catalog of mandates that was distributed to them at their first meeting (1/19/95) and stated that these mandates affect every state agency. Thirty percent of Montana's state budget is federal money. She said what they need to look at in the various agencies is how much money they get initially when a program is started (federal money has often been used to start a program "like a carrot to the donkey"), then they get locked into a program, the funding is withdrawn leaving the agency hanging in a financially precarious position.

REP. GALVIN stated on page 7, starting on line 23, it says everything, if it were only put into effect.

CHAIRMAN CURTISS said the bill would direct agencies to evaluate the grants they receive, make recommendations to the governor, and the governor in turn would take some kind of action.

REP. WISEMAN said he would expect the federal government to drastically cut back spending in the coming years, so it's even more important for the state to know what mandates exist and what they cost.

REP. HEAVY RUNNER said he was opposed to this legislation because at the hearing he asked for a fiscal note and the lack of one wasn't explained to him very well. He talked to the Secretary of the Senate and after reading a letter from Dave Lewis, he determined that action to produce a fiscal note was stalled. He believed there would be a fiscal impact and hoped by the time it gets to the floor, that there would be a fiscal note to look at. He took into account the additional workload of agencies to fulfill the directives of the bill. He said the bill is too vague and open-ended, especially on page 9 where it states that the legislature may request the assistance of any staff employed

by the legislature. New section 8 is also too vague and open-ended. He said it wasn't sufficiently explained to him.

REP. DAN MCGEE said on page 6, lines 3-15, it sets off a program for how it will work. He read the beginning of this section and said once the bill takes effect, state agencies will start documenting the information. He mentioned report recommendations outlined at the bottom of page 7 and beginning on page 8. He said it isn't real specific, but there is some order. He wondered if this was acceptable to **REP. HEAVY RUNNER.**

REP. HEAVY RUNNER said no, that it precisely proved his point that there would be additional costs for the time spent in analyzing the federal dollars that the state received, whether or not it falls within the confines of what they may determine as cost effectiveness, or if it conforms with Montana custom and culture. So there is a lot of interpretation that will need to be done. He said he would have felt better to have some idea of the fiscal impact.

REP. MURDOCK said she couldn't imagine that it isn't already an ongoing process and should already be integrated in state government.

CHAIRMAN CURTISS informed the committee that the Legislative Council serves at the pleasure of the Legislature and work year round. They can help with this project and it wouldn't be a burden to them.

REP. HEAVY RUNNER said again he wanted to see what the fiscal note would say, even though it would only be an assumption.

REP. SOMERVILLE stated he was positive that the data had already been generated, but also agreed with **REP. HEAVY RUNNER** that they haven't assessed the impact on Montana, but have only looked at the project itself.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: n/a.}

REP. MCGEE described how they get information from agency representatives, for instance, in committee hearings. He said the problem is that the figures are usually in their heads, and not written down. He commented to **REP. SOMERVILLE** that the information is "out there kind of" but is not where they can put their hands on it and see it. This bill will create a new document that will speak specifically to these issues.

REP. GALVIN asked if it would be appropriate to ask for a fiscal note or explanation.

CHAIRMAN CURTISS said that **REP. HEAVY RUNNER** has already done that and would be checking on it.

CHAIRMAN CURTISS said they could hold it from the floor until this information becomes available.

REP. HEAVY RUNNER commented that the committee will find out which law supersedes the other. He said it's been the old standard line that federal law supersedes state law, so the state may get a good education in terms of impacts. As far as the tribes are concerned, there may be some impact to them as well.

REP. BRAINARD called the question.

Vote: A voice vote was taken. **The motion carried 8-2 with REPS. HEAVY RUNNER and GALVIN voting no. REP. RAY PECK voted yes by proxy.**

EXECUTIVE ACTION ON HJR 27

Motion: **REP. MCGEE MOVED THAT HJR 27 DO PASS. REP. MCGEE MOVED THE AMENDMENTS.**

Discussion:

REP. MCGEE said the amendments would include the words "United States" on line 5 after the word "urging" and before the word "Congress," on line 11 after the comma and before the word "Congress," and on line 16 after the word "that" and before the word "Congress."

Vote: **The motion to adopt the amendments carried unanimously.**

Motion: **REP. MCGEE MOVED HJR 27 DO PASS AS AMENDED.**

Discussion:

REP. MCGEE asked if they want their resolution to use the term "enhanced recision."

REP. HEAVY RUNNER thought it would make for good discussion on the floor.

REP. SOMERVILLE asked if "President" in the bill referred to the President of the United States or the President of the Senate.

REP. MCGEE said that was a good point.

CHAIRMAN CURTISS thought because it refers to the United States Congress, that it would be clear which president it is.

REP. MCGEE said he had no problem with adding that in, and asked to add President of the United States on line 7 as a friendly amendment.

REP. SOMERVILLE said there are two places in the bill.

REP. MCGEE said it would be a friendly amendment, one that has already been acted on, to add "of the United States" on line 7 and line 17.

Vote: The motion carried unanimously.

ADJOURNMENT

Adjournment: 5:50 p.m.

AUBYN CURTISS, Chairman

PATTI BORNEMAN, Secretary

AC/pb

HOUSE OF REPRESENTATIVES

State/Federal Relations

ROLL CALL DATE 3/9/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Aubyn Curtiss, Chairman	✓		
Rep. Roger Somerville, Vice Chair, Majority	✓		
Rep. George Heavy Runner, Vice Chair, Min.	✓		
Rep. Matt Brainard	✓		
Rep. Bill Carey		✓	
Rep. Pat Galvin	✓		
Rep. Daniel McGee	✓		
Rep. Judy Rice Murdock	✓		
Rep. Bob Pavlovich		#PP	✓
Rep. Ray Peck			✓
Rep. Bill Wiseman	✓		

Peck proxy Sen SB 167 4-25

HOUSE STANDING COMMITTEE REPORT

March 10, 1995

Mr. Speaker: We, the committee on **State/Federal Relations** report that **Senate Bill 167** (third reading copy -- blue) **be concurred in**.

Signed: Aubyn Curtiss
Aubyn Curtiss, Chair

Carried by: Rep. Curtiss

Committee Vote:
Yes 8, No 2.

561353SC.Hbk

HOUSE STANDING COMMITTEE REPORT

March 10, 1995

Mr. Speaker: We, the committee on **State/Federal Relations** report that **House Joint Resolution 27** (first reading copy -- white) **do pass as amended.**

Signed: Aubyn Curtiss

Aubyn Curtiss, Chair

And, that such amendments read:

1. Title, line 5.
Following: "URGING"
Insert: "THE UNITED STATES"

2. Page 1, line 7.
Following: "President"
Insert: "of the United States"

3. Page 1, line 11.
Following: "WHEREAS,"
Insert: "the United States"

4. Page 1, line 16.
Following: "That"
Insert: "the United States"

5. Page 1, line 17.
Following: "President"
Insert: "of the United States"

-END-

Committee Vote:
Yes 8, No 0.

561354SC.Hbk

REPRESENTATIVE ROBERT J. "BOB" PAVLOVICH **HOUSE SEAT # 64**

COMMITTEE MEETING RESCHEDULE/CHANGE NOTICE

The **HOUSE STATE/FEDERAL RELATIONS COMMITTEE** scheduled to meet on **THURSDAY, March 9, 1995** at **11:00 A.M.** in Room **420** has been changed to **THURSDAY, March 9, 1995** at **5:00 P.M.** in Room **317.** Bills to be heard are:

HJR 27; EXECUTIVE ACTION ON SB 167

;

March 8, 1995 -- 4:23pm Patti Borneman, Secretary Phone: 4838